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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1701

JIM ROSE, WARDEN,

Petitioner

v.

JAMES E. MITCHELL and
JAMES NICHOLS, JR.,

Respondents

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR RESPONDENTS

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BRIEF FOR RESPONDENTS

OPINIONS BELOW

The opinion of the Court of Appeals (A. 127-141) is reported at 570 F.2d 129. The opinion and orders of the District Court (A. 98-99, 106-107, 121-122, 124-126) are not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on January 9, 1978. Petition to rehear was filed by the State (A. 142-150) and was denied on March 30, 1978. (A. 151). The petition for a writ of certiorari was timely filed within ninety (90) days of that date, and granted by this Court on October 2, 1978. *Rose* v.

Mitchell, U.S. , 99 S.Ct. 76 (1978). Jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

The United States Court of Appeals for the Sixth Circuit has ordered issued a writ of habeas corpus because the State murder indictment of the two (2) respondents was void in that the foreman of the State Grand Jury that indicted them was chosen in a manner violative of the Fourteenth Amendment.

The questions presented are:

1. Whether the foreman of the Grand Jury that indicted respondents was selected in a racially discriminatory manner violative of the Fourteenth Amendment.

2. Whether the State conviction of the respondents must be set aside if the foreman of the Grand Jury that indicted the respondents was selected in a racially discriminatory manner violative of the Fourteenth Amendment.

3. Whether federal habeas corpus relief is available to the respondents to challenge the validity of their conviction when they allege that the foreman of the Grand Jury that indicted them was chosen in a racially discriminatory manner violative of the Fourteenth Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 1, Section 14 of the Tennessee Constitution provides:

> Prerequisites to criminal charge.—That no person shall be put to answer any criminal charge but by presentment, indictment or impeachment.

United States Code, Title 18, Section 243 states:

> Exclusion of jurors on account of race or color. No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude; and whoever, being an officer or other person charged with any duty in the selection or summoning of jurors, excludes or fails to summon any citizen for such cause, shall be fined not more than $5,000.

STATEMENT OF THE CASE

The respondent Mitchell and Nichols and two (2) codefendants were indicted on November 6, 1972, for two (2) counts of first degree murder by the Tipton County, Tennessee, Grand Jury. On March 22, 1973, the respondents were found guilty after a jury trial of the murders and given two (2) sixty (60) year sentences to run consecutively. (Order of Circuit Court of Tipton County, Tennessee, March 22, 1973).

Prior to the trial, the respondents, on February 8, 1973, filed a written *pro se* pretrail motion in the nature of a plea in abatement in which they asked the Court to dismiss the indictment for, in part:

> The array of the grand jury of Tipton County, was not selected, drawn or summoned in accordance with the law and is not representative of the community from which it was impanelled because of systematic exclusion of Negroes, other minorities and people of lower income, especially in regards to the position of the foreman, of said grand jury.

(A. 1-2). The respondents are both black men.

On March 13, 1973, an evidentiary hearing was held in order to dispose of the pretrial motions including the motion raising the constitutionality of the selection of the grand jury and its foreman. The respondents at this hearing were represented by their court-appointed attorneys who had not made or drafted the plea in abatement. It is not clear on the record why the respondents had to file their own *pro se* pretrail motion and plea in abatement, but from a reading of the transcript on the plea of abatement hearing, it is clear that the record made by the respondents' court-appointed attorneys could have dealt more extensively with the issue of discrimination in the selection of the grand jury. For instance, there is no indication in the record of the total number of persons on the master jury list, nor is there any indication of the racial percentage breakdown of the master jury list. The

State Court hearing does, however, provide a great deal of relevant information, especially as to the selection of the grand jury foreman.

As related to the grand jury and grand jury foreman issue, a number of witnesses were called. (A. 3-36). The first witness was Mr. William Simonton, Jr., who was one of the jury commissioners. Mr. Simonton testified that the master jury list from which the grand jury was selected was chosen by the three (3) jury commissioners from a telephone directory supplied by the telephone company.[1] He testified that they had used this method for the first time two (2) years ago (1970), and that the jury list in use in November, 1972, was still the same one that had first been selected from the phone book two (2) years prior. (A. 8).

Mr. Simonton next explained the selection process for the master jury list.

> A. Well, we take the telephone book and we go down the list and we see the name of someone that we know, either in person or their reputation, to be of good character and we take that name and put it on the card.
>
> Q. And how do you go about establishing this good reputation?

---

[1] Respondent is providing the Court with some facts from the record regarding the selection of the grand jury itself so that the Court will better understand the total circumstances of this case.

A. By reputation. Our commissioners are from three distinct areas of the county and, among the three of us, we're pretty well suppose to know, either personally or by reputation people throughout the county.

. . . .

Q. In merely asking you this, Mr. Simonton: How do you insure that you will have a proper proportionate or a proper ratio of black members on this jury panel? That's really my question.

A. Well, we seek out the names of black citizens whom we know.

Q. Black citizens that you what?

A. Whom we know, either personally or by reputation.

Q. And you don't make any effort to pick any black members that you don't know or white members that you don't know?

A. Black or white, either; no sir.

Q. So you depend on knowing these people, then; your knowledge of these people?

A. Either personally, or by reputation; yes, sir. If it's just a name to us, we have to pass it up because we don't know them.

(A. 9-10). Mr. Simonton further testified that he believed that Tipton County had a population of 30 percent black. (A. 11). The other two (2) jury commissioners, Mr. William Bibb and Mr. W.F. Davis, were called but their testimony was cumulative to that of Mr. Simonton. (A. 12-17). Mr. Bibb did state that the Jury Commissioners are selected by the Trial Judge for a period of four (4) years. (A-12).

The next witnesses who were called were three (3) former foreman of the Tipton County Grand Jury. They all agreed that they had never known there to be a black grand jury foreman. Mr. Frank McBride stated that he had been grand jury foreman several times over the last twelve (12) years and he was then asked if he had "ever known of any foreman that was a black man." He stated that he had never known of a black being foreman. (A. 17-18). Mr. Peyton Smith testified that he had been foreman on several occasions going back "in the early '50's" and he was obviously acquainted with the workings of the Court. He had never known there to be a black grand jury foreman. (A. 20). See also testimony of former foreman Naifeh. (A. 25).

Mr. Peyton J. Smith also testified that he was the foreman for the November, 1972, grand jury that indicted the respondents. He testified that he was personally selected by the Trial Judge to serve for the November Term of Court. (A. 21). He recalled that one (1) black served on the November, 1972, Grand Jury. (A. 21). All the former foremen recalled there being one (1) or more blacks on prior grand juries, but never more than three (3).

Several other grand jurors were called to testify as to how many blacks were on the November, 1972, Grand Jury, and it was concluded that only one (1) grand juror had been black. (A. 30). The members of the Grand Jury, including the black member, testified that the race of the respondents was not mentioned in their deliberations and played no part in their decision. (A. 26-35).

After hearing the evidence on the selection of the Grand Jury and the foreman, the Trial Judge stated his ruling: "plea in abatement will be denied." (A. 35). The Trial Judge made no written or oral findings of fact or law, and did not state his reason or reasons for his ruling. He was later to enter a written order dated March 13, 1973. That order stated in full: "plea in abatement is overruled." (A. 36).

On appeal to the Court of Criminal Appeals of Tennessee, by decision dated June 5, 1974, the conviction of the respondents was upheld. As stated by the Court of Criminal Appeals:

> The third assignment states that it was error not to sustain the plea in abatement to the indictment because the proof showed that no negro had ever served as foreman on the grand jury, and that the eligible grand jurors were selected from the telephone directory.

This assignment was overruled by the Court of Criminal Appeals on the grounds that racial discrimination had not been proved in either the selection of the

grand jury or the foreman. (A. 38-39). Certiorari was denied as to all assignments of error by order of the Tennessee Supreme Court dated March 10, 1975. (A. 42). The respondents have exhausted their state remedies.

On May 16, 1975, respondent Mitchell filed a *pro se* petition for writ of habeas corpus in the United States District Court for the Western District of Tennessee (case No. 75-222). (A. 43-52). On June 11, 1975, respondent Nichols also filed a *pro se* petition (case No. 75-265). (A. 62-73). Although somewhat inarticulately stated, both respondents set out the issue of the improper selection of the grand jury and its foreman. (A. 47, 49, 67, and 70).

On August 6, 1975, the District Court referred this case to the United States Magistrate for his recommendations. (A. 83). On January 28, 1976, the Magistrate filed a sixteen (16) page report on Reference. (A. 84-97). He concluded that most of the claims made by the respondents were either without merit or could not be raised by federal habeas corpus. After a review of the facts, he did, however, conclude that the claims as to the selection of the grand jury, trial jury, and grand jury foreman did have merit, and that an evidentiary hearing should be held. (A. 90-91). The District Court, however, never held an evidentiary hearing.

On February 17, 1976, the District Court entered an order which agreed with the Magistrate's recom-

mendations as to the respondents' claims, except that the Court disagreed that an evidentiary hearing was necessary on the grand jury selection issue and determined that the State Courts had correctly decided the issue. The District Court did state that there was a prima facie case of discrimination shown with respect to the selection of the grand jury foreman and allowed the State additional time to file additional evidence. (A. 98-99). After receiving a response from the State, the District Court entered another order on April 6, 1976, in which it noted that the State had filed an affidavit of the grand jury foreman which stated that the foreman did not vote on the indictment of the respondents, but the Court indicated that it was still waiting to determine if the selected grand jury foreman were part of the regular jury venire when he was appointed foreman. (A. 106-107).

On April 14, 1976, the State filed with the Court an affidavit of the State Trial Judge. (A. 112-113). The State Trial Judge indicated that the foreman of the Tipton County November, 1972, Grand Jury, Mr. Peyton Smith, was personally selected by the Trial Judge as the prior foreman was going to be out of the county during the November, 1972, Term. Mr. Smith had served as foreman on prior occasions, and Mr. Smith was not a member of the regular jury panel or venire. As to racial discrimination, the Trial Judge stated:

> In my five counties, I do not have a black grand jury foreman, although I have a black member of my Jury Commission in one county. Most all of

> my Grand Juries and Petit Juries have sizeable numbers of blacks on them, both men and women. I don't appoint Grand Jury Foreman very often because when their two year term expires, I usually reappoint them, thus they serve a long time and the problem doesn't come up very often. I don't think that I have really given any thought to appointing a black foreman but I have no feeling against doing so.

(A. 113).

On February 17, 1977, the District Court disposed of the question of both the selection of the grand jury and the foreman by concluding that no racial discrimination in the composition of the grand jury had been shown and that the grand jury foreman was selected for other than racial reasons and that the foreman did not vote on the indictment of the respondents. (A. 121-122). The case was dismissed. (A. 123-124).

After the order of dismissal, the respondents, through counsel,[2] filed a motion to reconsider and for an evidentiary hearing. By order dated March 23, 1977, the Court denied this motion and cited as a further reason for its prior dismissal the application of *Stone* v. *Powell*, 428 U.S. 465 (1976), in that *Stone* precluded collateral attacks on State Court convictions. (A. 124).

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[2] Up to that point in the proceeding before the District Court, the respondents had not been represented by counsel. Thereafter, respondents were represented by a legal aid attorney.

Believing that the District Court erred in several respects, the respondents sought review in the Court of Appeals and the District Court granted the certificate of probable cause. (A. 126).

On January 9, 1978, the Court of Appeals ruled in favor of the respondents and set aside their convictions for murder. The Court determined that the grand jury foreman of the grand jury that indicted the respondents had been chosen in a manner violative of the Fourteenth Amendment and that since the Constitution prohibited the way in which the indictment was obtained, their convictions could not stand.

During the habeas corpus proceeding in the District Court and on appeal to the United States Court of Appeals for the Sixth Circuit, there was an issue of whether or not constitutional standards had been violated in the selection of the grand jury itself. The Court of Appeals, because of its decision as to the foreman, found it unnecessary to reach this issue, but indicated that if it had addressed this issue, the case would probably have to be remanded for a further evidentiary hearing in the District Court. *Mitchell* v. *Rose*, 570 F.2d 129. 132-134 (6th Cir. 1978).

On January 25, 1978, the State filed a petition to rehear and seriously asserted for the first time that *Stone* v. *Powell*, 428 U.S. 465 (1976), should be applied to this case so as to preclude federal habeas corpus jurisdiction. This petition was summarily denied by order of the Court of Appeals on March 30, 1978. (A.

151). The Court of Appeals subsequently stayed its mandate until completion of the proceeding in this Court. The respondents are now in the custody of the state of Tennessee at Brushy Mountain Penitentiary in Petros, Tennessee.

SUMMARY OF ARGUMENT

The case involves the constitutionality of the process by which the foreman of the Tipton County, Tennessee, Grand Jury was selected. Simply stated, it is the position of the respondents, as it was the position of the United States Court of Appeals for the Sixth Circuit, that the respondents made a prima facie case of discrimination in the selection of the foreman, and the State was not able to rebut that prima facie case. Therefore, the respondents were granted the relief to which they were entitled. Respondents ask this Court to affirm the decision of the Court of Appeals for the Sixth Circuit.

The State makes much of the fact that the respondents were guilty of a violent crime and it couches some of its argument in emotional terms, interwoven with the facts of the crime. The facts of the crime, however, are not relevant. Whether the crime be burglary or murder, this Court has continually held that discriminatory selection of grand juries will not be tolerated. The unconstitutional selection of the grand jury foreman taints the entire proceeding because a grand jury that is part unconstitutional cannot return

a proper indictment. Stated another way, a grand jury that is "twelve-thirteenths constitutional" still cannot render valid indictments. *Hale* v. *Henderson*, 336 F.Supp. 512, 516 (W.D. Tenn. 1972).

The facts relevant to this case are those surrounding the selection of the grand jury foreman, and the focus of this case should remain on those facts. The decision in the Court of Appeals was mandated because there had never been a black grand jury foreman within the memory of persons who testified in the State proceeding; and the State, in its attempt to rebut the prima facie case, produced nothing except the affidavit of the State Trial Judge that he did not have anything against appointing a black, but he had just never thought of it. The case for relief is clear when the facts are judged in light of the prior decisions of this Court. See *Castaneda* v. *Partida*, 430 U.S. 482 (1977).

The State contends that the fact that the foreman did not vote on the indictment means that there could be no actual prejudice to respondents so that no relief should be granted even if the foreman were improperly selected. This contention, however, is not supported by the law. The decision of the Court of Appeals is supported by the rationales of presumed prejudice and judicial integrity. The powerful leadership position of the grand jury foreman makes necessary the application of the longstanding doctrine of presumed prejudice, which has always been applied in jury discrimination cases. As an integral part of the

grand jury, the foreman is in a position to guide and control, whether properly or improperly, the decision-making process of the grand jury. In addition to presumed prejudice, the decision of the Court of Appeals is also supported by the doctrine of judicial integrity. When the Constitution prohibits the procedure by which the indictment was obtained, the courts must void the indictment. *Peters* v. *Kiff*, 407 U.S. 493 , 498 (1972).

The State also contends that *Stone* v. *Powell*, 428 U.S. 465 (1976), precludes federal habeas jurisdiction of a case raising discrimination in the selection of the grand jury. This argument is conceptually unsound and legally invalid for a number of reasons. *Stone* involved only the Fourth Amendment and the exclusionary rule and was expressly limited to Fourth Amendment claims. This case, however, involves the Fourteenth Amendment. *Stone* also applies only to cases in which there has been a full and fair hearing in State Court. There was no full and fair hearing here: the State Court judge made no findings of fact or conclusions of law; and the State Court judge who presided at the hearing was the same person who had chosen the grand jury foreman and whose conduct was at issue.

Furthermore, the rationales used in Fourth Amendment exclusionary rule cases are inapplicable in grand jury discrimination cases. The remedy of voiding indictments in grand jury discrimination cases is based upon presumed prejudice, judicial integrity, and, per-

haps, deterrence. In contrast, presumed prejudice, and judicial integrity do not support the exclusionary rule in Fourth Amendment cases.

The considerations of federalism in Fourth Amendment exclusionary rule cases are also different from those in Fourteenth Amendment jury discrimination cases. Whereas in exclusionary rule cases, this Court enforces a rule not imposed on the reluctant States until less than twenty (20) years ago, in grand jury discrimination cases, this Court enforces the congressional command of 18 U.S.C. § 243, and the intent of the States themselves, as expressed in the Fourteenth Amendment. The federal courts have long been the protectors of the rights of black citizens in this country, and it would reverse one hundred ten (110) years of history if this Court were to decide that the jury discrimination claims of black citizens could not be raised in a federal court. See R. Kluger, Simple Justice (1975).

This Court in *Brown* v. *Allen*, 344 U.S. 443 (1953), found claims of state prisoners alleging discrimination in the selection of grand juries to be cognizable in federal habeas corpus cases. Nothing in this case requires deviation from the mandate of *Brown* v. *Allen*.

ARGUMENT

I. THE FOREMAN OF THE GRAND JURY THAT INDICTED RESPONDENTS WAS SELECTED IN A RACIALLY DISCRIMINATORY MANNER VIOLATIVE OF THE FOURTEENTH AMENDMENT.

The position of foreman or forewomen of the Grand Jury is one of great importance in the Tennessee Grand Jury system.[3] In *Hale* v. *Henderson*, 485 F.2d 266 (6th Cir. 1973), the United States Court Appeals for the Sixth Circuit stated that:

> Petitioner also points out that the grand jury foreman has important statutory duties in Tennessee, T.C.A. 40-1510, 40-1622 (1955), and exercises a leadership role, as well as casting a vote in the grand jury.

Id. at 270.

As noted by the Federal Magistrate in his first Report on Reference in this case, the grand jury foreman or forewomen in Tennessee, under the provisions of T.C.A. § 40-1506, "sits as the thirteenth member of the grand jury." Since T.C.A. § 40-1706 provides that

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[3] Tennessee is one of the States that still requires a grand jury indictment to initiate felony charges. Tenn. Const. art. 1, § 14. It appears that twenty-five (25) States and the federal government have the constitutional requirement of grand juries for the initiation of some or most serious criminal charges. Van Dyke, Jury Selection Procedures (Appendix B: Grand Juries) 263-70 (1970); Van Dyke, *The Grand Jury: Representative or Elite*, 28 Hastings L.J. 37, 63-71 (1976).

"at least twelve grand jurors" must concur before an indictment can be returned, the foreman's or forewoman's vote can be the twelfth in returning the indictment. (A. 87). More important, even though the foreman or forewoman may not always vote, he or she must sign the indictment. T.C.A. § 40-1706. The indictment is void if not signed by the foreman or forewoman. *Bird* v. *State*, 103 Tenn. 343, 52 S.W. 1076 (1899). In Tennessee there must always be a foreman or forewoman in the finding of an indictment. *State* v. *Collins*, 65 Tenn. 151, 153 (1875). While the State may argue that the foreman in this case did not vote, the fact remains that the indictment is not valid under Tennessee law unless the foreman or forewoman signs the indictment.

The grand jurors themselves are selected by random draw from the preselected jury panel or venire. T.C.A. § 40-1501. The jury list itself is chosen by the jury commissioners every two (2) years. See T.C.A. § 22-223 to 22-242.[4] The grand jury foreman or forewoman is chosen in a completely different manner. In essence, the grand jury foreman or forewoman is hand picked by the criminal court judge. T.C.A. § 40-1506. In addition, as in the instant case, the grand jury

[4] For a good general discussion of Tennessee jury selection procedures for the grand jury, petit jury, and grand jury foreman or forewoman, see LeClercq, *The Tennessee Court System*, 8 Mem. St. L.Rev. 185, 489-99 (1978).

foreman or forewoman need not be a member of the jury panel or of the grand jury. T.C.A. § 40-1507.[5]

T.C.A. § 40-1510 sets out the statutory duties of the grand jury foreman or forewoman. He or she must assist the District Attorney in ferreting out crime. Out of term he or she must advise the District Attorney with respect to law violations and provide him names of witnesses who may be summoned before the next term of the grand jury. In term, the foreman or forewoman may order the issuance of subpoenas for witnesses to go before the grand jury, unless directed otherwise by the District Attorney. Thus, it can readily be seen that the foreman or forewoman in Tennessee has important statutory duties as to the day-to-day operation of the grand jury as well as to the validity of the indictments returned. The grand jury speaks through its foreman or forewoman. See Holdsworth, History of English Law, Vol. I, at 314 (1956). The grand jury foreman or forewoman is the "presiding officer" of the grand jury. *State* v. *Collins*, *supra* at 153. See *State* v. *Gouge*, 80 Tenn. 132, 135 (1883).[6]

[5] This procedure of choosing the grand jury foreman or forewoman from the population at large is atypical. Most jurisdictions require the foreman to be selected from the grand jury itself. See, e.g., Fed. R. Crim. P. 6(c); Miss. Code Ann. § 13-5-45. Other states provide for the election of the foreman or forewoman by the grand jury itself from among its members. See, e.g., Ky. Rev. Stat. § 29A.250.

[6] The foreman's oath, found at T.C.A. § 40-1508, is much more extensive than the simple oath of the grand jurors at T.C.A. § 40-1509.

Since the circuit judge chooses the grand jury foreman or forewoman from the population at large with no standards other than the minimum qualifications set out in T.C.A. § 40-1507,[7] the potential for discrimination is great. The judge is likely to choose as foreman or forewoman someone whom he knows personnally or by reputation and thus avoid the time-consuming process of seeking qualified individuals and interviewing them or otherwise screening them. Of course, when the judge, as here, admits that "I don't think that I have really given any thought to appointing a black foreman," (A. 113), then one segment of the population is automatically removed from consideration.[8]

There is no doubt that the selection of the grand jury foreman or forewoman, just as the selection of the members of the grand jury, is subject to the requirements of the Fourteenth Amendment. If a black man is subject to indictment by the grand jury, then blacks cannot be systematically excluded in the selection process by which the foreman or forewoman is

[7] T.C.A. § 40-1507 requires the foreman or forewoman to be at least twenty-five (25) years old and to possess all the qualifications of other jurors.

[8] As to the duty to become familiar with persons eligible for jury service, see *Cassell* v. *Texas*, 339 U.S. 282, 287-90 (1950). As to the duty to refrain from following a course of conduct that naturally tends to exclude a certain group, see *Akins* v. *Texas*, 325 U.S. 559, 403-04 (1945).

selected. As was stated by the District Court for the Western District of Tennessee:

> If the [State] Court means to say that, if the twelve members of the grand jury other than the foreman were selected without systematic exclusion of Negroes, it would be constitutionally immaterial if Negroes were systematically excluded from the position of foreman, we cannot agree. We cannot agree because *Whitus* v. *Georgia*, *supra* [385 U.S. 545 (1967)] *does not indicate that a grand jury that is twelve-thirteenths constitutional can render valid indictments* (emphasis added).

Hale v. *Henderson*, 336 F. Supp. 512, 516 (W.D. Tenn. 1972).

Hale v. *Henderson* involved a challenge to the selection process of the grand jury foreman in Shelby County, Tennessee, in that it was alleged that racial discrimination was present in the selection process. When the *Hale* case finally came to be heard on the question of the selective discrimination of the grand jury foreman, Judge Mac Swinford was sitting by special designation in the Western District of Tennessee. Judge Swinford indicated that if the petitioner therein had shown that the grand jury foreman had been chosen from outside the body of the jury venire, his claim would have been "well taken" as there had been a long history of complete exclusion of blacks from the position of grand jury foreman. In the case then before the District Court, the foreman was a

foreman pro tempore who had been chosen from among the members of that grand jury. The petitioners had not challenged the legality of the selection of the jury venire or the grand jury itself, so the Court said that it must reach the conclusion "that the venire was selected in a manner that did not systematically exclude blacks." *Hale* v. *Henderson*, 349 F.Supp. 567, 568 (W.D. Tenn. 1972). Simply stated, Judge Swinford would have granted relief if the grand jury foreman in that case had been chosen from a source other than the grand jury. In this case, under facts almost identical to *Hale* v. *Henderson*, the grand jury foreman was chosen from a source other than the grand jury. The opinion of Judge Swinford leads the strongest possible support to the resondents' position.

Judge Swinford's opinion in *Hale* v. *Henderson* was affirmed by the Court of Appeals for the Sixth Circuit at 485 F.2d 266 (1973). In that Court, while concurring with Judge Edwards and Judge Miller in denying relief on the facts in the case, Judge Lambros indicated that he believed a prima facie case of discrimination had been made, regardless of whether the foreman pro tempore was selected from the jury venire or from the public at large, inasmuch as none of the past one hundred fifty (150) foremen or foreman pro tempore in Shelby County had been black. Judge Lambros noted that the criminal trial judge who appointed

the foremen and foremen pro tempore knew only a few blacks. He also stated that:

> It is difficult to imagine what more the majority would require to warrent a prima facie finding of discrimination except a confession on the part of the state judges that they were prejudiced against blacks and had intentionally avoided appointing them. . . .

Hale v. *Henderson*, 487 F.2d 266, 271 (1973).[9]

The case now before the Court is different from *Hale;* most importantly, the foreman selected by the Trial Judge was not a member of the grand jury or the venire. The foreman appointed by the Trial Judge was selected from the public at large under the provisions of T.C.A. § 40-1506.

Prior to the respondents' trial in the State Court, a hearing was held on the question of the systematic exclusion of blacks from the position of grand jury foreman. That testimony has been set forth in The Statement of The Case and, based on that testimony, the Court of Appeals concluded that "there had never been a black foreman or forewoman of a grand jury in Tipton County." *Mitchell* v. *Rose*, supra at 135.[10]

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[9] At least the State Trial Judge in *Hale* v. *Henderson* had considered the appointment of blacks to the position of foreman. 485 F.2d at 269-70. The State Trial Judge in this case had not.

[10] Beyond the proof in the record, it would stretch credibility to even suggest that a black person in West Tennessee would have been appointed foreman of a grand jury in this century prior to the advent of the "civil rights" movement. History

The Trial Judge and the person selecting the grand jury foreman under T.C.A. § 40-1506 stated as follows in his affidavit filed in this case: "*I don't think that I have really given any thought to appointing a black foreman* but I have no feeling against doing so." (Emphasis added). (A. 113). This statement shows a negligent and callous exclusion of blacks by the person designated by statute to appoint the grand jury foreman or forewoman. It is obvious that if the Trial Judge has never even "thought" of appointing a black foreman, then blacks have been excluded peremptorily by having never been considered for the position. This admission by the Trial Judge, standing alone, comes very close to being the kind of confession that Judge Lambros discussed in his concurring opinion (noted *supra*) in *Hale* v. *Henderson*, 485 F.2d 266, 271 (1973).

Considering the two (2) District Court opinions in *Hale* v. *Henderson*, the State of Tennessee can hardly argue that it has been "ambushed" by a "new" constitutional standard set forth by the Court of Appeals

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teaches us otherwise. J. Cartwright, The Triumph of Jim Crow: Tennessee Race Relations in the 1880's (1976); R. Hamburger. Our Portion of Hell (1973) (a personal history of the civil rights movement in Fayette County, Tennessee; Fayette County borders on Tipton County); 1891 Tenn. Pub. Acts, ch. 52, § 2 (blacks must sit separately in railroad passenger cars); 1901 Tenn. Pub. Acts, ch. 7, § 1 (interracial schools prohibited); 1905 Tenn. Pub. Acts, ch. 150, § 1 (blacks must sit separately on street cars). These acts are codified in T.C.A. § 49-3701, T.C.A. § 65-1314, and T.C.A. § 65-1707. See generally E. Warren, A Republic If You Can Keep It, 46-48 (1972).

in *Mitchell* v. *Rose*. Well before the State Court trial in this case in March, 1973, the Federal District Court in Memphis (thirty-five miles from Tipton County) had made it abundantly clear that this Court's decisions regarding discrimination in jury and grand jury selection applied with full force to the selection of grand jury foremen or forewomen. *Hale* v. *Henderson*, 336 F.Supp. 512 (decided January 27,1972). *Hale* v. *Henderson*, 349 F.Supp. 567 (decided October 4, 1972). The State, thus, cannot legitimately contend that the Judge did not know that he had a duty to select the foreman in a manner consistent with this Court's prior grand jury discrimination decisions. This is certainly an important consideration when considering the proper remedy. See *United States* v. *Peltier*, 422 U.S. 531, 538 (1975).

The kind of selection and appointment of a person as important as the grand jury foreman or forewoman in Tennessee placed in the hands of a person who has never given a "thought" to appointing blacks is the kind of selection process repeatedly condemned by this Court as violative of the Fourteenth Amendment.[11] See, e.g., *Castaneda* v. *Partida*, 430 U.S.482 (1977); Annot., *Jury Selection - Group Discrimination*,

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[11] It is also violative of 18 U.S.C. § 243. See Mr. Justice White's concurring opinion in *Peters* v. *Kiff*, 407 U.S. 493, 505-07 (1973).

33 L.Ed.2d 783 (1973).[12] To exclude blacks from consideration by never giving them a "thought" is clearly to always deny to anyone of the black race the position of grand jury foreman or forewoman.

The State's position in reference to the Judge's duty in selection of the foreman or forewoman ignores the affirmative duty that is placed on the selecting official. The Judge had an affirmative duty "not to pursue a course of conduct in the administration of [his] office which would operate to discriminate in the selection of jurors on racial grounds." *Hill* v. *Texas*, 316 U.S. 400, 404 (1942).

A showing that the percentage of blacks selected as foremen over a period of time (in this case 0 percent for as long as people could remember) varied significantly with the percentage of blacks living in Tipton County (32.4 percent according to the 1970 census)[13] and that the selection process is amenable to discrim-

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[12] See generally Gewin, Circuit Judge, *An Analysis of Jury Selection Decisions*, Appendix to *Foster* v. *Sparks*, 506 F.2d 805, 813-37 (5th Cir. 1975); Kuhn, *Jury Discrimination: The Next Phase*, 41 S.Cal. L.Rev. 234 (1968); Sperlich and Jaspovice, *Grand Juries, Grand Jurors and the Constitution*, 1 Hastings, Const. L.Q. 63 (1974). A good article that treats at length the Tennessee jury selection system as it relates to prior decisions of this Court is Daughtrey, *Cross-Sectionalism In Jury Selection Procedures after Tayor* v. *Louisiana*, 43 Tenn. L.Rev. 1 (1975). The author is a Judge on the Tennessee Court of Criminal Appeals. The author believes that Tennessee should no longer retain its "Key man" system of jury and grand jury selection.

[13] 1970 Census figures for Tipton County are attached in the appendix to this brief at pages 1-10.

inatory action (the statement of the State Trial Judge, A. 112-113) is thus sufficient to warrant a prima facie finding of discrimination. *Castaneda* v. *Partida, supra; Alexander* v. *Louisiana*, 405 U.S. 625 (1972).[14] In *Alexander* the Court in a unanimous opinion held that when there was proof of opportunity for discrimination coupled with a disproportionately low number of negroes throughout the selection process, discrimination is in fact proved, if the State cannot carry its burden of proof. See *Castaneda* v. *Partida, supra* at 512-13 (Powell, J., dissenting).

The respondents have made out a prima facie case of discrimination in the selection of the grand jury foreman that cannot be overcome merely by the self-serving statement of the Trial Judge that he had "no feeling against" appointing a black foreman. (A. 113). *Castaneda* v. *Partida, supra* at 499 n.19; *Aledxander* v. *Louisiana, supra* at 632 (1972). The State in this case has failed to overcome the respondents' prima

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[14] The State's citation to *Washington* v. *Davis*, 426 U.S. 229 (1976), and *Village of Arlington Heights* v. *Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977), as authority for the contention that discrimination must be proved by positive proof of intent is inapposite. This Court made clear in *Washington* v. *Davis* that statistical disparity and the shifting of the burden of proof after the showing of prima facie case was still the clear law in the area of grand jury selection. *Washington* v. *Davis, supra* at 239, 241. Again in *Arlington Heights*, this Court made clear its adherence to the traditional rules for jury selection cases. *Arlington Heights* v. *Metropolitan Housing Development Corp., supra* at 266 n.13. See *Castaneda* v. *Partida, supra* at 493-94.

facie case of discrimination in the selection of the grand jury foreman. The State has offered no proof that the Judge considered all segments of the population in Tipton County, no proof that the Judge used any rational critieria in selecting the grand jury foreman, no proof that the Judge interviewed prospective grand jury foremen or forewomen with a view to seleting a qualified person without regard to race, and no proof that there had ever been a black foreman or forewoman in Tipton County or that one had ever been considered. It has certainly not been suggested that there were no blacks in Tipton County qualified to serve. What the State did produce was the sentiment of the Judge who selected the foreman that while he had "no feeling against" appointing a black person, he had just never"really given any thought to appointing a black foreman." (A. 113).

As stated by the Court of Appeals:

> Thus a judge who "never really gave any thought to appointing a black is discriminating just as surely as were the jury commissioners who never selected blacks because their names were "never discussed, "*Norris* v. *Alabama*, 294 U.S. 587, 55 S.Ct. 679, 79 L.Ed. 1074 (1935), or because they didn't know any blacks, *Turner* v. *Fouche*, 396 U.S. 346, 90 S. Ct. 532, 24 L.Ed.2d 567 (1970). Officials who select grand jurors have a duty to learn who is qualified to fill the position of grand juror, and to consider qualified individuals from all segments of society. Failure to perform that duty, resulting in the exclusion of a qualified

> segment of society, is unconstitutional discrimination. *Turner, supra* 396 U.S. 345, 90 S.Ct. 532, 24 L.Ed.2d 567.

Mitchell v. *Rose, supra* at 135.[15]

Based on the reasoning above, it should be concluded that the respondents' rights under the Fourteenth Amendment have been violated by the discriminatory manner in which the grand jury foreman in Tipton County, Tennessee, was chosen. Since discrimination has been proven, it is necessary to determine the appropriate relief to remedy this discrimination.

II. THE PROPER REMEDY IN THIS CASE IS TO SET ASIDE THE CONVICTIONS OF THE RESPONDENTS.

Since 1879, this Court, in protecting the Fourteenth Amendment rights of both black and white citizens of this country and in enforcing the strong congressional statement in 18 U.S.C. § 243, has set aside convictions

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[15] The State contends that the Court of Appeals somehow violated the clearly erroneous rule by reversing the District Court. It should be remembered that the District Court did not conduct an evidentiary hearing but based its findings on the State Court transcript and certain affidavits filed in the District Court. Therefore, the "clearly erroneous" rule would not apply. 5A Moore's Federal Practice § 52.03[1] at 2624 (1977). Furthermore, the Court of Appeals did not disagree with the District Court's findings of facts, but rather with the District Court's application of the facts to the law. Of course, the Court of Appeals is not bound by the District Court's conclusions of law or findings that combine both fact and law, when there is an error as to the law. 5A Moore's Federal Practice § 52.03[3], at 2662-64 (1977).

when it has found a grand jury[16] to have been discriminatorily chosen. See, e.g., *Castaneda* v. *Partida, supra; Peters* v. *Kiff, supra; Strauder* v. *West Virginia*, 100 U.S. 303 (1879). Since *Strauder*, this remedy has been considered proper, as the law will not allow a conviction to stand when the method by which it was obtained violated fundamental rights. The reason for voiding indictments, however, goes beyond the protection of the integrity of the judicial system and encompasses the proposition that the exclusion of a racial group from a grand jury will likely cause prejudice to a member of the excluded group.[17] Early on this Court stated:

> It is well known that prejudices often exist against particular classes in the community, which sway the judgment of jurors, and which, therefore operate in some cases to deny to persons of those classes the full enjoyment of that protection which others enjoy.

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[16] The same constitutional principles apply to grand jury selection and petit jury selection. "Principles which forbid discrimination in the Selection of Petit Juries also govern the Selection of Grand Juries." *Pierre* v. *Louisiana*, 306 U.S. 354, 362 (1939). See *Alexander* v. *Louisiana*, 405 U.S 625, 626 n. 3 (1972).

[17] The State's argument that the harmless error rule of *Chapman* v. *California*, 386 U.S. 18 (1967), should be applied in this case is without foundation. In none of this Court's jury discrimination cases has the harmless error rule ever been "suggested," must less applied. See *Chapman* v. *California, supra* at 44 (Stuart, J., concurring). Certainly, every grand jury case decided since 1967, by implication, rejected the application of *Chapman* to grand jury discrimination cases. See, e.g., *Castaneda* v. *Partida, supra; Peters* v. *Kiff, supra.*

. . . .

> And how can it be maintained that compelling a colored man to submit to a trial for his life by a jury drawn from a panel from which the state has expressly excluded every man of his race, because of color alone, however, well qualified in other respects, is not a denial to him of equal legal protection.

Strauder v. *West Virginia*, 100 U.S. 303, 309 (1879). This Court's adherence to the rationale of persumed prejudice has extended until the present. *Peters* v. *Kiff, supra* at 509 (Burger, C.J., dissenting). See *Castaneda* v. *Partida, supra.*

Because of the difficulty in proving actual prejudices in certain situations that are inherently susceptible to prejudice, this Court has always been willing to accept a rule of presumed prejudice. See, e.g., *Parker* v. *Gladden*, 385 U.S. 363, 365 (1966); *Turner* v. *Louisiana*, 379 U.S. 466, 473 (1965). Overt discrimination is often difficult to prove and, in the situation of a grand jury proceeding where subtle discrimination can easily be exercised, it is asking too much to expect the grand jurors or foremen or forewomen to confess their prejudice in open court. Human experience teaches us not to expect otherwise, and, as stated in *Turner* v. *Louisiana*, it would be "blinking reality" not to recognize the potential for prejudice.

In this case, even though the grand jury foreman did not vote on the indictment, the likelihood of sub-

stantial prejudice still inhered in the proceedings. The foreman or forewoman is part of the thirteen (13) person grand jury; he or she is the spokesperson for the grand jury; there is no indictment without the signature of the foreman or forewoman; and the foreman or forewoman is the leader, handpicked by the Trial Judge.[18] Like every other leader of a group, the foreman or forewoman is in a position to guide, whether properly or improperly, the decisionmaking process of the body.[19]

The Court of Appeals in this case summed up the rationale as follows:

> It seems clear that the potential for prejudice, given the position of authority and influence the foreman or forewoman holds, is considerable, and in such cases where the fact of prejudice may be impossible to prove, yet its effect could be so insidious and far-reaching, the courts have refused to require proof of prejudice before granting relief.

[18] The Tennessee Courts have recognized that a person present in the Grand Jury Room not even in a leadership position might have great influence over the grand jury. In discussing the presence of an unqualified and nonvoting person present in the grand jury room, the Tennessee Supreme Court stated "he could also have much influence upon the others by reasoning and arguing the matter of inquiry with the others." *State* v. *Duncan*, 15 Tenn. 271 (1834).

[19] See generally Bass, Leadership, Psychology and Organizational Behavior (1960); Shaw, Group Dynamics: The Psychology of Small Group Behavior 262-83 (1976).

Mitchell v. *Rose, supra* at 136.[20]

In determining the potential prejudice in this case, it should also be kept in mind that the respondents have made a substantial showing that the grand jury itself was chosen in an impermissible manner. See *Mitchell* v. *Rose, supra* at 132-34. This increases the chances of prejudice and the opportunity for the foreman and forewoman to exercise improper influence on a grand jury which is itself suspect.

It is not the potential for prejudice alone that mandates the correctness of the opinion below. In fact, relief has been granted by this Court to a white defendant who was indicted by a grand jury from which blacks had been improperly excluded. *Peters* v. *Kiff, supra.* This relief is mandated as a vindication for the rights of those improperly excluded and because "illegal and unconstitutional jury selection procedures cast doubt on the integrity of the whole judicial process" and thus deprive a criminal defendant due pro-

[20] While Judge John Peck wrote the decision of the Court of Appeals, the other two members of the panel were Chief Judge Harry Phillips and Senior District Judge Frank Gray sitting by designation (Judge Gray is now deceased). Judge Phillips is and Judge Gray was life-long residents of Tennessee, practiced law in Tennessee, and were both deeply involved in government and judicial service in Tennessee. See History of the Sixth Circuit, A Bicentennial Project 138-39, 180-81 (1977).

cess of law. *Peters* v. *Kiff, supra* at 498. As this Court has said:

> reversible error does not depend on a showing of prejudice in an individual case. The evil lies in the admitted exclusion of an eligible class or group in the community in disregard of the prescribed standards of jury selection.

Ballard v. *United States*, 329 U.S. 187, 195 (1946).

> where, as in this case, timely objection has laid bare a discrimination in the selection of grand jurors. The conviction cannot stand, because the Constitution prohibits the procedure by which it was obtained. Equal protection of the laws is something more than an abstract right. It is a command which the State must respect. The benefits of which every person may demand.

Hill v. *Texas*, 316 U.S. 400, 406 (1946); accord, *Taylor* v. *Louisiana*, 419 U.S. 527 (1975). Relief is also mandated by the strong statutory command of 18 U.S.C. § 243, which states:

> No citizen possessing all other qualifications which are or may be prescribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any state on account of race, color, or previous condition of servitude . . . .

This statute has been read by three (3) members of this Court to give "concreteness" to the generalities of the Fourteenth Amendment and to state with certainly that Congress intended the courts to deal with special severity when persons are excluded from serving on grand juries on account of their race. A proven violation of 18 U.S.C. § 243 voids the indictment. *Peters* v. *Kiff, supra* at 505-507 (White, J., concurring).[21]

III. FEDERAL HABEAS CORPUS RELIEF IS AVAILABLE TO THE RESPONDENTS TO CHALLENGE THE VALIDITY OF THEIR CONVICTIONS WHEN THE FOREMAN OF THE GRAND JURY THAT INDICTED THEM WAS CHOSEN IN A MANNER VIOLATIVE OF THE FOURTHEENTH AMENDMENT.

A. Introduction

The State of Tennessee herein seems to be making an attack on *Brown* v. *Allen*, 344 U.S. 443 (1953), and its progeny and wishes this Court to overrule *Brown* v. *Allen*, ignore the clear reading of 28 U.S.C. § 2241(c)(1) and § 2254(a), and extend the holding in *Stone* v. *Powell*, 428 U.S. 465 (1976), beyond Fourth Amendment claims. Before reaching the merits of such a contention, respondent would assert that this is not the case for this Court to even consider such an expansion of *Stone* v. *Powell*.

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[21] Mr. Justice White was joined in this opinion by Mr. Justice Brennan and Mr. Justice Powell.

The State of Tennessee thought so little of the *Stone* v. *Powell* argument that in its brief to the Court of Appeals, the state stated in total:

> The state respectfully submits that the district judge's citation to *Stone* v. *Powell* came at a time when the case was already decided on other grounds. The citation is surplusage and not relevant or determinative of the issues before this Court.

(R, Reply Brief for the State of Tennessee in the Court of Appeals at 24).

The decision of the Court of Appeals does not even mention *Stone* v. *Powell*, and it was only after the decision was rendered by the Court of Appeals on January 9, 1978, that the State raised the issue of *Stone* v. *Powell* in a Petition to Rehear. (A. 142-150). On March 30, 1978, the Court of Appeals refused to reconsider its decision of January 9, 1978, and in doing so, simply stated that "the court concludes that the issues raised therein [the *Stone* v. *Powell* issue] were fully considered upon the original submission and decision of this case." (A. 151).

The respondent is convinced that the State's view of *Stone* v. *Powell* is incorrect. However, should this Court want to consider a drastic expansion of the doctrine of *Stone* v. *Powell* beyond Fourth Amendment claims, it should not come in a case in which this Court does not even have the benefit of a reasoned decision by the Court of Appeals on the issue.

While respondents adhere to the view expressed above, they, of course, must address the merits of the issue.

B. The "Great Writ" Is Available In This Case.

The writ of habeas corpus ad subjiciendum is given constitutional recognition in Article I, Section 9, clause 2 of the United States Constitution. The constitutional recognition, however, does not define the precise scope of the writ, and the first judiciary act authorized federal courts to issue the writ only on behalf of prisoners "in custody under the authority of the United States." In 1867 the writ was made applicable to any person "in custody in violation of the Constitution or laws .... of the United States," including state prisoners.[22] 28 U.S.C. § 2241(c)(3). See also 28 U.S.C. § 2254(a). So while the Constitution protects the "Great Writ," it is Congress that sets it exact parameters by statute. *Brown* v. *Allen*, 344 U.S. 443, 498-500 (1953) (Frankfurter, J., concurring).

> In so far as this jurisdiction enables federal district courts to entertain claims that State Supreme Courts have denied rights guaranteed by the United States Constitution, it is not a case of a lower court sitting in judgment or a higher

[22] The history of the writ as applied to state prisoners is traced in *Developments in the Law - Federal Habeas Corpus*, 83 Harv. L. Rev. 1038, 1048-62 (1970). See *Wainwright* v. *Sykes*, 433 U.S. 72, 74-81 (1977).

> court. It is merely one aspect of respecting the Supremacy Clause of the Constitution whereby federal law is higher than state law. It is for the Congress to designate the member in the hierarchy of the federal judiciary to express the higher law. The fact that Congress has authorized district courts to be the organ of the higher law rather than a Court of Appeals, or exclusively this Court, does not mean that it allows a lower Court to overrule a higher Court. It merely expresses the choice of Congress how the superior authority of federal law should be asserted.

Brown v. *Allen, supra* at 510 (Frankfurter, J., concurring).

In recent years the writ has undergone some change and much of the change in the scope of the writ has been a reaction to judicial hostility to the exclusionary rule and to more favorable acceptance by this Court of the policy of adhering to the State procedural rules. Recent cases[23] by this Court have sharply curtailed the impact of *Fay* v. *Noia*, 372 U.S. 391 (1963), and in *Stone* v. *Powell*, 428 U.S. 465 (1976), this Court held that Fourth Amendment claims were not cognizable in a "federal habeas corpus proceeding if there had been a full and fair hearing in state court on the Fourth Amendment issue." *Stone* v. *Powell* certainly reversed by implication *Kaufman* v. *United States*, 394 U.S. 218 (1969).

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[23] See *Wainwright* v. *Sykes*, 433 U.S. 72 (1977); *Francis* v. *Henderson*, 425 U.S. 536 (1976); *Tollett* v. *Henderson*, 411 U.S. 258 (1973).

Several recent decisions by this Court, however, indicate that the recent changes in the scope of the writ may be at an end. In *Swain* v. *Pressley*, 430 U.S. 372 (1977), this Court recognized that Congress had great control over the scope of the writ in making changes in the availability of review under 28 U.S.C. § 2255 in the District of Columbia. It would appear that *Swain* again recognized the validity of Congressional control over the writ and that further restriction on claims congnizable under 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 2254(a) should be considered very carefully.

In *Wainwright* v. *Sykes*, 433 U.S. 72 (1977), this Court held that a defendant who failed to comply with a State's contemporaneous objection rule was not entitled to federal habeas corpus review of his *Miranda* claim. In reaching its decision in *Wainwright*, this Court reviewed the history of federal habeas corpus jurisdiction, canvassed the types of federal claims that may be properly considered on habeas corpus, and indicated that the scope of the writ as set forth in *Brown* v. *Allen, supra*, was still good law. *Wainwright* v. *Sykes, supra* at 79, 87. Certainly no member of this Court has expressed a belief that the clock should be completely turned back on the scope of the "Great Writ." See *Schneckloth* v. *Bushamonte*, 412 U.S. 218, 255-56 (1973) (Powell, J., concurring).

Mr. Justice Jackson was a sometime critic of the expansion of the writ, but he recognized its need for the protection of federal rights, and he simply stated

what is as timely today as it was twenty-five (25) years ago:

> Society has no interest in maintaining an unconstitutional conviction and every interest in preserving the writ of habeas corpus to nullify them when they occur.

Brown v. *Allen, supra* at 548 (Jackson, J., concurring).

The arguments pro and con as to the scope of the writ have been made all too often to this Court and are well chronicled in the decisions of this Court and legal literature.[24] They do not bear repeating. The cit-

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[24] See, e.g., *Stone* v. *Powell, supra* (majority and dissenting decisions); *Schneckloth* v. *Bustamonte, supra* (Powell, J., concurring); *Kaufman* v. *United States, supra Irrelevant? Collateral Attacks on Criminal Judgments*, 38 U. Chi. L.Rev. 142 (1970); Reitz, *Federal Habeas Corpus: Post Conviction Remedy for State Prisoners*, 108 U. Pa. L.Rev. 461 (1960); Wright and Sofaer, *Federal Habeas Corpus for State Prisoners:* The *Allocation of Fact-Finding Responsibility*, 75 Yale L.J. 895 (1966). Several members of this Court have commented on the impact of the heavy caseload now facing this Court. This is somewhat related to the impact of *Stone* v. *Powell*, as the necessity for the Court to review decisions of State Courts on petition for certiorari becomes greater if habeas corpus jurisdiction is removed from the Federal District Courts. See generally *Duncantell* v. *Texas*, *U.S.* , *47 U.S.L.W. 3386 (Dec. 5, 1978) (No. 77-1831) (Brennan, J., dissenting); Brown Transport Corp.* v. *Atcon, Inc.*, U.S. , 47 U.S.L.W. 3387 (Dec. 5, 1978) (No. 77-1581) (White, J., dissenting) (Burger, C.J.; Brennan, J., comments); *Mincey* v. *Arizona*, U.S. , 98 S.Ct. 2408 (Marshall, J., concurring); Stolz, *Federal Review of State Court Decisions of Federal Questions: The Need for Additional Appellate Capacity*, 64 Calif. L.Rev. 943, 960-62 (1976) (habeas corpus as a device for circumventing lack of appellate capacity).

izens of this country who most need the protection of the law look to the federal courts for the protection of federal constitutional rights and the duty to protect these rights should not be abrogated to the states. Congress did not intend that the duty be abrogated, and society certainly has no legitimate interest in imprisoning persons in violation of the Constitution.

While respondents adhere strongly to the view that decisions of this Court recognize that claims of grand jury discrimination in State Court proceedings are cognizable in federal habeas corpus proceedings,[25] the respondents recognize that several members of this Court have suggested that *Stone* v. *Powell* makes a "strong case" that claims of grand jury discrimination are not cognizable on federal habeas corpus. *Castaneda* v. *Partida*, 430 U.S. 482, 508 n.1 (Powell, J., dissenting, joined by the Chief Justice and Mr. Justice Rhenquist).[26] While at first blush it may seem that a case could be made for the extension of *Stone* v. *Powell* to grand jury discrimination cases, an analysis of the issues involved should lead to an opposite conclusion.

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[25] See, e.g., *Castañeda* v. *Partida*, 430 U.S. 482 (1977); *Brown* v. *Allen*, 344 U.S. 443 (1953).

[26] Mr. Justice Stewart dissented separately and stated that he was in "substantial agreement" with Mr. Justice Powell's dissent.

C. This Case Calls For Application Of The Traditional Scope Of The Writ.

Unwritten in the criticism of the use of the writ of habeas corpus in the last forty (40) years is the concept that the expansion of the writ may have outserved its usefulness. While respondents disagree with this assessment, an analysis of early decisions of this Court supports the idea that the scope of the writ as it existed prior to 1953 would warrant the granting of relief in this case.

In grand jury discrimination cases, this Court adheres to the idea that a grand jury that is selected in violation of the Fourteenth Amendment cannot return valid indictments and therefore subsequent proceedings are invalid. *Cassell* v. *Texas*, 339 U.S. 282 (1950).

It is the law in Tennessee that unless the signature of the grand jury foreman is affixed to the indictment, the indictment is "fatally defective." *Bird* v. *State*, 103 Tenn. 343, 344, 52 S.W. 1076 (1889). If the indictment is defective, "the defendant should not [be] held to answer it." *Gunkle* v. *State*, 65 Tenn. 626, 627 (1872). Given the legal requirement of a grand jury foreman, the absence of a legally selected foreman would deprive the trial court of jurisdiction of the case because without a foreman or forewoman, there is no valid indictment, and "the so-called indictment has no legal efficiency whatever," and "the defendant could not be held to answer it." *State* v. *Herron*, 86 Tenn. 442, 448 (1888). Under Tennessee law, if an

improperly selected or unqualified person participates in the grand jury proceeding, the indictment is of no effect. See, e.g., *State* v. *Duncan*, 15 Tenn. 271, 275 (1834).

This case calls then for nothing more than the application of the traditional principle that if the committing court did not have jurisdiction because of a violation of federal law, relief should be granted on application to a federal court for habeas corpus relief. See *Ex parte Wilson*, 114 U.S. 417 (1885) (this Court ordered the release of a federal prisoner who was convicted without a grand jury indictment).

In *In re Moran*, 203 U.S. 96 (1906), one of the challenges made to the jurisdiction of the Oklahoma court was that the grand jury was not constituted as provided by territorial law, thus depriving the territorial court of jurisdiction. Justice Holmes, writing for the court, rejected this claim because a violation of territorial law was not considered a violation of "The Constitution or any law or Treaty of the United States" under the federal habeas corpus statute. Justice Holmes' decision certainly is to be read as meaning that if the grand jury in Oklahoma had been selected in a manner violative of the Constitution or of the law of the United States, he would have granted relief. In this case, where there is a clear violation of the Fourteenth Amendment and 18 U.S.C. § 243, under the

reasoning of the Court in *Moran*, relief should be granted. *In re Moran*, *supra* at 103-104[27]

Under Tennessee law if the indictment is "void," the State Court is deprived of jurisdiction[28] and if the indictment is void because of a violation of federal law, then *In re Moran* should apply.

D. There Was No Full And Fair Hearing In This Case And Therefore Stone V. Powell Does Not Apply.

Further, *Stone* v. *Powell* does not apply in this case because the respondents did not receive a "full and fair" hearing in State Court within the meaning of the *Stone* decision. In determining whether or not a full and fair hearing was held, this Court in *Stone* referred to the standards of *Townsend* v. *Sain*, 372 U.S. 293 (1963). *Stone* v. *Powell*, *supra* at 494 n.36. Of course, *Stone* only precludes habeas review when the petitioner had "an opportunity for full and fair litigation of [his] . . . claim."

Townsend was a habeas corpus action brought by a state prisoner as a collateral review of what he

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[27] This interpretation of *In re Moran* is inconsistent with this Court's decisions in *Andrews* v. *Swartz*, 156 U.S. 277 (1895) and *In re Wood*, 140 U.S. 278 (1891). Neither *Andrews* or *In re Wood* are mentioned by Justice Holmes in the *Moran* decision.

[28] If the indictment is illegal in Tennessee, it confers no subject matter jurisdiction on the court. *State* v. *Hughes*, 212 Tenn. 644, 648, 371 S.W.2d 445 (1963); *Robinson* v. *City of Memphis*, 197 Tenn. 598, 277 S.W.2d 341 (1955).

claimed was the denial of his federal constitutional rights during a state criminal proceedings. Specifically, he alleged that a coerced confession had been admitted in evidence when it should have been suppressed. A hearing had been held by the State Court Judge on a suppression motion, but it had been denied, with the State Judge stating "Gentlemen, the Court will deny the motion to suppress and admit the statement into evidence." *Townsend*, *supra* at 302 n.1. The Court below had denied the application for the writ without an evidentiary hearing, stating that the State Court record was sufficient for a determination that there was no violation of the petitioner's constitutional rights. This Court reversed and in so doing set out six (6) situations in which a District Court must hold an evidentiary hearing. Two (2) of the six (6) situations are relevant here:

(1) Where the State Court has not made adquate factual or legal finding to support its conclusions. *Townsend*, *supra* at 313-16.

(2) Where "evidence crucial to the adequate consideration of the constitutional claim was not developed at the State hearing," unless there was "inexcusable" default under *Fay* v. *Noia*, 372 U.S. 391 (1963). *Townsend*, *supra* at 317.

The citation in *Stone* to *Townsend* must suggest that this Court considers the two (2) situations above to be among the ones in which "an opportunity for full and fair litigation" of a claim is absent.

The first situation involves the State Court's not making findings of fact and leaving the legal grounds for its conclusion uncertain. At the end of the State Court hearing, the State Judge merely stated that the *pro se* plea in abatement was denied. (A. 35, 36).

Returning to *Townsend*, this Court stated:

> The State Trial Judge rendered niether an opinion, conclusions of law, nor findings of fact . . . . In short, there are no indicia which would indicate whether the trial judge applied the proper standard of federal law in ruling upon the admissibility or the confession.

Townsend, supra at 320. This, of course, relates to need for findings of fact and law in the State Court as stated in *Townsend, supra* at 313-16. In this case, the State Trial Judge made no findings of fact and no findings of law. It is impossible to tell if he applied the "correct constitutional standards" and to what facts he applied them. *Townsend* places some obligation on State Courts to articulate reasons for their decisions on federal constitutional questions. In the absence of such reasons, a habeas petitioner cannot be said to have received "even . . . the semblance of a full and fair hearing." *Townsend, supra* at 313.

The second *Townsend* category is one in which, "for any reason not attributable to the inexcusable neglect of petitioner, see *Fay* v. *Noia*, 372 U.S. [391], 438, evidence crucial to the adequate consideration of the constitutional claim was not developed at the State

hearing." *Townsend, supra* at 317. The evidence crucial to the respondents' claim is the testimony of the State Trial Judge as to how and why he selected the grand jury foreman. It was certainly an awkward situation in which the State Judge whose very actions were being brought into question was presiding at the evidentiary hearing. It is easy to see why he was not called to the stand and questioned as to his role, and yet the information that he could provide was critical to the issue. The failure of respondents' court-appointed lawyers to bring out these relevant facts under the circumstances in this case cannot be regarded as the respondents' inexcusable default under the standards set out in *Fay* v. *Noia*, , 372 U.S. 391, 438, adopted by *Towsend, supra* at 317.

It would also seem unimaginable that the vindication of constitutional claims should depend upon findings of fact by and a hearing conducted before the very party whose conduct was called into constitutional question.[29] The same judge whose conduct was at issue sat as the judge at the evidentiary hearing in which the claim of discrimination was litigated.

E. *Stone* v. *Powell* Is Limited To Fourth Amendment Claims.

The District Court below, in its order denying the respondents' motion to reconsider cited *Stone* v.

[29] Cf. *Tumey* v. *Ohio*, 273 U.S. 510 (1927) (defendant has a right to a judge who has no interest in the proceeding).

Powell, 428 U.S. 465 (1976), as additional authority as to why the case should be dismissed. (A. 124-26). The District Court argued that *Stone* v. *Powell* precluded federal review by habeas corpus of the respondents' claims if they had "received a full and fair hearing in state court as to his claim." The District Court also cited *O'Berry* v. *Wainwright*, 546 F.2d 1204 (5th Cir. 1976), as authority for this proposition. The Court of Appeals rightfully rejected this reasoning as *Stone* v. *Powell* only applies to Fourth Amendment questions.

Stone v. *Powell* has no application to non Fourth Amendment claims. The rationale of *Stone* v. *Powell* is that the exclusionary rule will not be applied on collateral review of Fourth Amendment claims because of the ineffectiveness of the rule. In response to the dissenters' claim that *Stone* would bring about a "drastic withdrawal of federal habeas corpus jurisdiction," the majority responded:

> *With all respect the hyperbole of the dissenting opinion is misdirected. Our decision today is not concerned with the scope of the habeas corpus statute as authority for litigating constitutional claims generally.* We do reaffirm that the exclusionary rule is a judicially created remedy rather than a personal constitutional right . . . and we emphasize the minimal utility of the rule when sought to be applied to Fourth Amendment claims in a habeas corpus proceeding . . . In sum, we hold only that a federal court need not apply the exclusionary rule on habeas review of a

> Fourth Amendment claim absent a showing that the state prisoner was denied an opportunity for a full and fair litigation of that claim at trial and on direct review. Our decision does not mean that the federal court lacks jurisdiction over such a claim, but only that the application of the rule is limited to cases in which there has been *both such a showing and a Fourth Amendment violation* (emphasis added).

Stone v. *Powell*, 428 U.S. 465, 494 n.37.

The rejection of *Stone* for other than Fourth Amendment violations was applied, for example, by the Court of Appeals for the Fifth Circuit in *Greene* v. *Massey*, 546 F.2d 51 (5th Cir. 1977). In *Greene* a federal habeas corpus petition had been filed by a state prisoner alleging that his rights under the prohibition against double jeopardy had been violated. The Fifth Circuit rejected the contention of the State of Florida that *Stone* v. *Powell* should be applied and cited the above quotation. *Greene* v. *Massey*, 546 F.2d 5l, 53 (5th Cir. 1977).

The District Court's citation to *O'Berry* v. *Wainwright*, 546 F.2d 1204 (5th Cir. 1977), as authority for the application of *Stone* v. *Powell* is misdirected. *O'Berry* was a Fourth Amendment case, thus calling for the direct application of *Stone* v. *Powell*. Further, it was Chief Judge John R. Brown who authored both the *Greene* case (decided January 26, 1977) and the *O'Berry* case (decided February 11, 1977), and he obviously had well in mind the principles of *Stone* v.

Powell in both cases. There is absolutely no authority in the *O'Berry* case to indicate that *Stone* v. *Powell* applies to other than Fourth Amendent-exclusionary rule cases.

F. The Several Rationales Used In *Stone* v. *Powell* Do Not Apply In This Case.

In deciding *Stone* v. *Powell*, this Court considered the rationale of the exclusionary rule and other factors that weighed against federal habeas corpus review of the Fourth Amendment claim. These factors as applied to the facts in this case will be discussed in turn.

In looking at the exclusionary rule as applied to the states in *Mapp* v. *Ohio*, 367 U.S. 643 (1961), this Court critically examined the doctrine of "judicial integrity" and "deterrence," rejected "judicial integrity" as a rationale for the exclusionary rule and further found the "deterrent" effect of the rule to be so attenuated by the time it was used in collateral proceedings as to be of no practical effect. There are several critical differences in grand jury discrimination cases. While this Court may have rejected the rationale of "judicial integrity" in exclusionary rule cases,[30] this Court has

[30] *Stone* v. *Powell*, *supra* at 435. The exclusionary rule normally involves constitutional violations by police officers while this case involves a constitutional violation committed by a state judge. A violation of constitutional protections by a judicial officer is a more direct assault upon judicial integrity than is the admission of evidence seized by police in violation of the Constitution.

not rejected such a rule in grand jury discrimination cases. In fact, this Court strongly adheres to such a rationale. See *Taylor* v. *Louisiana*, 419 U.S. 522 (1975); *Peters* v. *Kiff*, 407 U.S. 493, 498-99 (1972).

While this Court has never applied the rationale of deterrence to jury discrimination cases, an argument could be made that "deterrence" does support the relief granted below by the Court of Appeals. To the extent that deterrence is at issue in this case, this consideration, when dealing with a constitutional rule that effects state judges, is different than applying exclusionary rules to cases involving policemen. Predictably, state judges will be much more attentive to the remedial effects of federal decisions on federal law than are policemen.

The ruling by the Court of Appeals in this case has had an effect in Tennessee. Subsequent to the decision of the Court of Appeals, the September, 1978, *Judicial Newsletter* of the Tennessee Public Law Institute carried a lengthy article on *Mitchell* v. *Rose*, which was forwarded to every judge in the state. After a review of the law, the article concluded with several paragraphs on the "Implied Duties of the Tennessee Judiciary after *Mitchell*."[31] While such suggestions to the state judiciary do not guarantee obedience to constitutional rulings, it certainly appears that the Court of Appeals decision will have some remedial effect in Tennessee.

[31] Article is attached as appendix to this brief, at 11-17.

Beyond the concept of "judicial integrity" and the possible remedial aspects of "deterrence" lies the rationale of presumed prejudice in jury discrimination cases. This rationale has been discussed and explained earlier, and it is a concept consistently adhered to by this Court since 1879. *Strauder* v. *West Virginia*, *supra*. Presumed prejudice is based on rational human experience and the realization that bringing discrimination to light is an extremely difficult evidentiary proposition. In considering presumed prejudice, then, it should be recognized that the remedy in grand jury discrimination cases, unlike the Fourth Amendment exclusionary rule, has never been based *solely* on prophylactic considerations.

One other consideration is the concept of cross-sectionalism. Implicit in this Court's systematic exclusion decisions is the recognition that there is also a very real, albeit unquantifiable, harm to the individual interests of a criminal defendant whose case is processed through a system of decisionmaking from which the views of substantial minority groups have been excluded.

The rule of the enforcement of the Fourteenth Amendment through the voiding of convictions, when discrimination in the selection of the grand jury is shown, is no late comer to the judicial decisionmaking. This Court has applied such a remedy to the states since *Strauder* v. *West Virginia*, 100 U.S. 303 (1879), while the exclusionary rule was not applied to the states until *Mapp* v. *Ohio*, 367 U.S. 643, in 1961. It

was not until 1969 in *Kaufman* v. *United States*, 394 U.S. 217, 226 (1969), that this Court indicated in dicta that Fourth Amendment claims of state prioners were reviewable on federal habeas corpus, while habeas review of grand jury discrimination claims by state prisoners was established in 1953 in *Brown* v. *Allen*, 344 U.S. 443 (1953).

To the extent that systematic-exclusion claims are based upon "prophylactic" principles, *Peters* v. *Kiff*, 407 U.S. 493 (1972), establishes that those principles call for broader, not narrower, opportunity to litigate claims. In Fourth Amendment cases, standing to complain of illegal searches and seizures is limited to those criminal defendants whose substantive interests have been adversely affected by the search (see, e.g., *Rakas* v. *Illinois*, U.S. , 47 U.S.L.W. 4025 (Dec. 5, 1978) (No. 77-5781); *Brown* v. *United States*, 411 U.S. 223 (1973)), whereas the precise holding in *Peters* is that white defendants may complain about the systematic exclusion of blacks. So while Fourth Amendment law has moved away from allowing opportunity to litigate the claims, this Court's jury discrimination cases have broadened the opportunity of defendants to raise constitutional claims.

To the extent that *Stone* v. *Powell* was based on considerations of federalism, the instant case does not present the same federalism, considerations. This case involves the enforcement of the Fourteenth Amendment and 18 U.S.C. § 243, which have always been applied to the states by federal courts to protect the

rights of black citizens. It does not involve the enforcement of the first ten Amendments, which have only been applied to the sometimes reluctant states by judicial opinion over the last fifty (50) years. In this area, we can discern the clear intent of Congress that the Fourteenth Amendment and the Post Civil War "civil rights" acts be enforced by the federal courts. See *Peters* v. *Kiff*, 407 U.S. 493, 505-07 (White, J., concurring); cf. *Monroe* v. *Pape*, 365 U.S. 167 (1961).

It is especially important in a case of this nature that the federal courts be open to claims of discrimination in the selection of the grand jury foreman or forewoman because the challenged state procedure is a procedure that directly involves the judiciary of Tennessee since it is the judge who chooses the grand jury foreman or forewoman. While it is always important to have an independent federal factfinder for the enforcement of federal claims, it is of vital importance in this case where the federal claim asserts that the *state trial judge* has followed unconstitutional procedures and the state judge presided over the challenge to his own conduct.

In constitutional decisionmaking by this Court, the doctrine of *stare decisis* has never been given strong adherence, but it is a consideration that should not be ignored. *Helvering* v. *Hallock*, 309 U.S. 106, 119 (1940); *Burnet* v. *Coronado Oil and Gas Co.*, 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting). Prior to *Stone* v. *Powell*, many criminal defendants and all

lower federal courts relied on the scope of federal habeas corpus jurisdiction as expressed in *Brown* v. *Allen*, and while *Stone* v. *Powell* is now the law of the land, its further expansion at the price of *stare decisis* should only be undertaken if the benefits involved far outweigh the cost.

For the reasons stated in this section of the brief, the respondents contend that the decision of *Stone* v. *Powell* should not be expanded to deny the respondents in this case a federal forum, as the costs of expanding *Stone* in this case would far outweigh the benefits and would do violence to previous decisions of this Court, to congressional statutes, and to the concept of equal justice for black citizens to which this Court has long been the vindicator. See R. Kluger, Simple Justice (1975).

This Court should continue to adhere to *Brown* v. *Allen* when claims of racial discrimination in the selection of a grand jury or grand jury foreman are raised[32]

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[32] Habeas corpus petitioners raising this type of claim must, of course, comply with this Court's decision in *Francis* v. *Henderson*, 425 U.S. 536 (1976).

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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1970 CENSUS OF HOUSING

HOUSING CHARACTERISTICS FOR STATES, CITIES, AND COUNTIES

volume I

part 44 — Tennessee

Issued August 1972

U. S. DEPARTMENT OF COMMERCE
Peter G. Peterson, Secretary
James T. Lynn, Under Secretary
Harold C. Passer, Assistant Secretary for Economic Affairs and Administrator,
Social and Economic Statistics Administration
BUREAU OF THE CENSUS
George Hay Brown, Director

Table 30. Selected Characteristics of Housing Units With Negro Head of Household, for Counties: 1970

(For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

Counties With 400 or More Negro Population	Total Negro population	Occupied housing units										1.01 or more persons per room	
							Owner occupied		Renter occupied				
		Total	Lacking some or all plumbing facilities	In one-unit structures	One-person households	Median number of rooms	Total	Median value (dollars)	Total	Lacking some or all plumbing facilities	Median contract rent (dollars)	Total	With all plumbing facilities
Anderson	2 876	806	66	292	139	4.2	291	7 300	315	31	50	103	93
Bedford	2 663	793	255	635	172	4.4	378	6 400	415	147	42	146	89
Bledsoe	404	41	16	36	6	4.6	34	5000–	7	3	30–	7	3
Blount	2 505	739	173	693	122	4.7	568	6 000	171	65	33	123	83
Bradley	2 280	657	127	511	116	4.7	544	7 100	293	84	37	125	94
Carroll	3 080	898	481	823	201	4.3	567	5000–	331	245	30–	206	76
Cheatham	592	164	114	154	26	4.6	118	5 800	44	39	35	33	6
Chester	1 274	341	169	330	63	4.6	199	5 100	142	108	30–	87	33
Cocke	699	175	75	167	17	4.6	105	5000–	70	35	35	48	25
Coffee	1 191	313	105	254	53	4.6	161	7 100	152	60	34	75	41
Crockett	3 007	710	451	679	119	4.3	359	5 800	351	313	30–	239	78
Davidson	87 851	34 213	2 135	14 918	4 648	4.4	9 606	11 500	14 607	1 480	61	4 245	3 812
Decatur	473	120	65	116	17	4.7	77	7 000	43	31	30–	31	15
Dickson	1 398	365	192	336	65	4.7	253	7 200	112	81	30–	83	30
Dyer	3 978	1 178	584	1 028	296	4.3	528	6 600	650	433	30–	250	88
Fayette	13 887	2 825	2 287	2 661	295	4.0	984	7 500	1 841	1 755	30–	1 244	144
Franklin	2 104	521	193	480	73	4.9	371	5 100	150	76	30	130	62
Gibson	9 816	2 618	1 030	2 257	463	4.4	1 335	5 800	1 283	703	31	674	333
Giles	3 436	980	502	833	190	4.4	495	6 800	485	282	30	217	89
Grainger	1 137	292	112	242	49	4.8	175	7 600	117	54	35	55	24
Hamblen	2 086	543	109	450	77	4.9	335	7 600	208	37	40	79	56
Hamilton	44 397	13 952	533	8 211	3 005	4.3	4 733	9 200	9 219	315	52	2 506	2 385
Hardeman	8 612	1 655	1 040	1 523	179	4.3	821	6 800	834	693	30–	691	193
Hardin	1 041	280	157	265	43	4.8	191	5000–	89	66	30–	57	30
Hawkins	992	285	110	264	52	4.9	203	7 400	82	39	33	54	30
Haywood	10 723	2 452	1 732	2 312	344	4.2	874	7 100	1 578	1 358	30–	894	173
Henderson	1 728	456	207	387	77	4.6	270	6 600	186	107	30–	101	45
Henry	3 139	947	439	841	209	4.2	505	5 000	442	255	30	182	84
Hickman	597	169	89	161	35	4.7	114	5 300	55	35	30–	41	17
Humphreys	516	155	69	143	41	4.3	110	8 400	45	21	36	35	17
Jefferson	797	223	90	209	41	5.0	165	5 900	58	33	30–	36	10
Knox	23 277	6 833	409	4 624	1 434	4.6	3 143	9 100	3 670	246	45	936	880
Lake	1 840	475	367	451	108	3.7	73	5 600	402	346	30–	155	19
Lauderdale	6 826	1 657	1 044	1 549	299	4.1	734	5 700	923	753	30–	523	143
Lawrence	430	140	49	113	32	4.4	79	5 900	61	22	36	19	8
Lincoln	2 [illegible]	759	309	609	137	4.4	322	6 500	437	209	32	173	88
Loudon	471	127	45	122	18	4.9	91	5 300	36	15	30	22	14
McMinn	1 808	468	133	411	85	4.9	314	6 300	154	48	31	107	71
McNairy	1 340	394	198	278	37	4.4	212	5000–	82	71	30–	95	21
Madison	20 444	5 397	2 287	3 858	989	4.2	2 101	7 700	3 196	1 685	34	1 423	663
Marion	1 195	336	116	293	61	4.9	239	5 600	97	50	35	71	32
Marshall	1 863	509	217	464	85	4.5	271	7 200	238	121	30	106	41
Maury	8 035	2 355	893	2 013	427	4.4	1 244	5 300	1 011	545	30	524	249
Meigs	868	228	53	215	35	5.1	191	6 000	37	19	30–	47	33
Montgomery	10 620	2 643	623	2 053	469	4.8	1 458	9 300	1 185	295	46	536	387
Obion	2 108	671	270	599	171	4.4	337	6 000	334	180	31	114	61
Putnam	480	119	59	104	24	4.5	81	5 100	38	16	60	28	13
Rhea	585	171	23	156	35	5.0	115	6 900	56	8	31	26	22
Roane	1 568	442	157	393	85	4.8	312	6 100	130	51	31	84	47
Robertson	4 625	1 280	551	1 036	273	4.2	472	5 700	808	408	35	324	152
Rutherford	7 135	1 883	668	1 435	290	4.4	1 006	7 000	877	338	39	424	220
Shelby	266 159	68 160	6 752	45 333	11 344	4.1	29 485	9 600	39 675	4 821	50	20 013	17 700
Smith	631	160	88	149	36	4.4	98	6 900	62	44	30–	45	11
Sullivan	2 432	694	76	466	141	4.8	357	10 000	339	48	40	94	81
Sumner	4 270	1 160	514	1 004	197	4.5	644	7 300	516	282	31	259	119
Tipton	9 084	2 106	1 462	1 914	380	4.1	808	5 900	1 298	1 065	30–	761	172
Trousdale	932	275	162	250	32	4.6	153	6 200	122	92	30–	52	14
Warren	1 216	343	126	294	66	4.4	201	6 500	142	62	30	70	40
Washington	2 833	736	72	577	160	4.9	411	9 000	325	34	45	129	107
Wayne	1 732	479	166	442	109	4.3	286	5000–	193	104	30–	98	59
Williamson	4 790	1 215	504	909	172	4.3	594	8 700	621	293	38	341	166
Wilson	4 139	1 155	506	962	188	4.6	683	7 000	472	199	38	247	130

Table 29. Selected Characteristics for Counties: 1970

(For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

Counties	Total population	Total housing units	Year-round housing units														Vacant for sale only or for rent
						Occupied housing units											
									Owner occupied		Renter occupied			1.01 or more persons per room			
			Total	Lacking some or all plumbing facilities	In non-unit structures	One-person households	Median number of rooms	With Negro head of household	Total	Median value (dollars)	Total	Lacking some or all plumbing facilities	Median contract rent (dollars)	Total	With all plumbing facilities		
Anderson	60 [illegible]	20 451	20 425	2 407	16 151	2 680	4.9	606	13 536	11 300	5 595	897	62	1 605	1 045	678	
Bedford	25 039	8 820	8 814	1 442	7 684	1 186	5.1	793	5 489	11 600	2 725	590	47	663	459	300	
Benton	12 126	4 637	4 535	930	4 031	583	4.9	88	3 259	9 200	835	239	45	328	217	148	
Bledsoe	7 643	2 357	2 355	886	2 207	263	4.9	41	1 650	6 600	518	268	34	291	112	72	
Blount	63 744	21 835	21 683	2 827	18 824	2 401	5.1	739	15 300	12 300	5 041	952	54	1 560	1 036	541	
Bradley	50 686	16 446	16 420	1 687	13 576	1 838	5.0	657	10 685	13 000	4 884	746	58	1 534	1 177	510	
Campbell	36 045	8 916	8 776	3 246	8 017	1 180	4.8	42	5 727	6 200	2 326	1 050	35	1 084	388	369	
Cannon	8 467	3 075	3 067	966	2 878	391	5.0	51	2 193	9 100	642	307	39	239	94	77	
Carroll	25 741	9 401	9 394	2 201	8 289	1 332	4.8	898	6 424	9 100	2 241	796	44	706	396	298	
Carter	42 575	14 500	14 446	2 777	12 574	1 611	5.0	96	10 489	10 100	2 831	709	47	1 193	713	427	
Cheatham	13 199	4 223	4 218	944	3 714	396	4.9	164	3 109	11 300	829	316	53	466	295	93	
Chester	9 927	3 243	3 243	788	2 904	425	4.8	341	2 143	8 700	894	368	38	283	151	71	
Claiborne	19 420	6 486	6 478	2 954	5 994	720	4.8	78	4 274	7 800	1 621	979	30	729	202	298	
Clay	6 624	2 383	2 382	1 086	2 219	310	4.8	44	1 623	7 300	509	309	32	256	70	63	
Cocke	25 283	8 159	8 154	2 643	7 180	931	4.7	175	5 189	8 100	2 411	997	40	1 106	526	230	
Coffee	32 572	11 104	11 099	1 429	9 401	1 294	5.2	313	7 291	12 600	2 877	470	58	711	489	581	
Crockett	14 402	5 028	5 011	1 499	4 645	776	4.9	710	3 172	8 500	1 474	804	30	540	258	169	
Cumberland	20 733	6 766	6 744	2 034	6 096	784	5.0	1	4 656	8 600	1 541	590	43	789	353	164	
Davidson	448 003	147 266	147 223	6 283	99 669	23 154	5.0	24 213	83 694	15 700	56 715	3 525	81	10 441	9 519	5 133	
Decatur	9 457	3 804	3 751	999	3 453	446	4.9	120	2 473	7 600	731	257	43	255	137	124	
De Kalb	11 151	4 374	4 365	1 191	3 966	536	5.1	87	2 848	10 000	904	344	40	293	160	208	
Dickson	21 977	7 563	7 542	1 685	6 678	1 010	5.1	365	5 415	10 700	1 606	533	53	634	386	173	
Dyer	30 427	10 680	10 665	2 301	9 212	1 726	4.9	1 178	6 339	10 600	3 711	1 406	45	945	525	280	
Fayette	22 692	5 947	5 945	2 944	5 368	614	4.5	2 825	2 918	10 900	2 645	2 000	30	1 517	353	139	
Fentress	12 593	4 049	4 045	2 011	3 789	445	5.1	–	2 604	5 700	1 034	660	30	550	131	159	
Franklin	27 244	8 771	8 763	1 453	7 856	1 076	5.2	521	6 015	10 200	2 158	517	48	786	474	285	
Gibson	47 871	17 103	17 083	3 225	14 826	2 577	4.9	2 618	10 952	10 000	4 941	1 544	42	1 425	858	557	
Giles	22 138	7 966	7 963	2 234	6 791	1 075	5.0	980	4 774	10 800	2 299	865	40	673	336	287	
Grainger	13 948	4 951	4 688	2 242	4 322	407	4.8	43	3 328	8 100	880	580	32	585	189	128	
Greene	47 630	16 024	16 014	4 243	13 916	1 819	5.1	292	11 000	11 600	3 687	1 379	51	1 266	612	481	
Grundy	10 631	3 571	3 395	1 297	3 143	352	4.7	2	2 586	5000–	589	347	30	506	180	55	
Hamblen	38 696	12 716	12 707	1 472	10 664	1 267	5.0	543	8 548	12 200	3 432	545	58	1 036	769	443	
Hamilton	254 236	87 595	87 473	3 487	65 031	13 425	5.0	13 952	52 552	13 100	29 725	1 338	64	6 442	5 802	3 444	
Hancock	6 719	2 303	2 302	1 465	2 225	235	4.7	27	1 502	6 100	513	393	30–	311	58	149	
Hardeman	22 435	6 473	6 458	2 302	5 856	825	4.8	1 655	3 667	8 800	2 127	1 140	35	1 065	425	221	
Hardin	18 212	6 474	6 430	1 817	5 993	733	4.9	280	4 069	8 100	1 692	738	36	767	404	213	
Hawkins	33 726	10 965	10 933	2 342	9 899	1 086	5.0	285	7 824	11 200	2 419	1 121	43	1 150	522	202	
Haywood	19 796	6 044	6 042	2 548	5 519	820	4.7	2 459	2 937	10 600	2 522	1 618	31	1 102	308	247	
Henderson	17 291	6 143	6 137	1 527	5 416	755	4.8	456	4 258	9 000	1 392	588	34	540	321	230	
Henry	23 749	9 305	9 091	1 730	7 740	1 429	4.8	947	6 029	9 200	2 209	616	46	682	442	202	
Hickman	12 096	4 222	4 214	1 327	3 871	491	4.9	169	2 959	7 500	913	411	41	368	164	106	
Houston	5 845	2 116	2 115	631	1 871	259	5.0	93	1 395	8 700	455	168	49	192	111	54	
Humphreys	13 560	4 802	4 784	902	4 258	545	5.1	155	3 300	11 500	960	229	52	348	249	150	
Jackson	8 141	2 912	2 911	1 326	2 731	316	4.9	4	1 933	9 600	686	423	30	262	87	113	
Jefferson	24 940	8 275	8 088	1 893	7 056	868	5.0	223	5 687	10 000	1 810	600	48	767	404	213	
Johnson	11 569	4 090	4 071	1 647	3 676	454	5.1	36	2 944	7 400	722	406	33	403	140	102	
Knox	276 293	93 011	92 962	6 402	71 609	13 651	5.0	6 833	57 656	12 900	29 709	2 701	66	6 285	5 197	3 647	
Lake	7 896	2 752	2 607	995	2 353	385	4.6	475	1 045	9 800	1 337	777	33	375	114	77	
Lauderdale	20 271	6 843	6 725	2 482	6 126	1 063	4.7	1 657	3 645	8 300	2 498	1 410	31	915	344	234	
Lawrence	29 097	9 546	9 531	1 986	8 802	1 151	5.1	140	6 692	9 200	2 358	740	40	845	483	200	
Lewis	6 761	2 395	2 395	561	2 136	333	5.1	27	1 668	7 500	523	169	43	184	100	123	
Lincoln	24 318	8 386	8 380	2 149	7 301	1 124	5.1	759	5 307	10 800	2 483	932	40	691	374	274	
Loudon	24 266	8 439	8 425	1 345	7 584	1 029	5.0	127	5 924	9 100	1 901	410	45	680	454	191	
McMinn	35 462	12 074	12 040	1 861	10 790	1 439	5.0	468	8 498	10 000	2 657	594	48	963	661	404	
McNairy	18 369	6 469	6 461	1 912	5 985	825	4.8	294	4 457	6 900	1 528	722	34	583	298	237	
Macon	12 315	4 420	4 417	1 806	4 128	464	5.0	26	3 121	9 400	948	571	36	326	132	135	
Madison	65 727	21 860	21 847	3 750	17 063	3 523	4.9	5 297	12 467	12 400	8 075	2 232	48	2 222	1 328	669	
Marion	20 577	6 562	6 523	1 481	5 677	782	4.8	336	4 485	7 200	1 649	509	43	862	479	147	
Marshall	17 319	6 124	6 116	1 256	5 334	851	5.1	509	3 962	10 200	1 691	479	42	455	272	254	
Maury	43 376	14 654	14 629	2 937	12 420	2 016	5.0	2 255	9 245	10 600	4 400	1 288	47	1 313	781	379	
Meigs	5 219	1 842	1 732	667	1 584	150	4.8	44	1 161	8 100	406	249	30–	228	74	43	
Monroe	23 475	7 736	7 707	2 323	6 993	820	5.0	228	5 284	8 900	1 687	695	39	868	397	230	
Montgomery	62 721	18 815	18 806	2 083	14 477	2 027	5.1	2 643	10 982	13 500	5 847	701	68	1 623	1 290	1 376	
Moore	3 568	1 242	1 242	394	1 144	153	5.2	61	890	10 300	259	123	40	103	51	37	
Morgan	12 619	4 168	4 165	1 651	3 842	453	5.0	2	2 920	5 900	876	691	30	526	237	161	
Obion	29 906	11 068	11 038	1 538	9 580	1 769	5.0	671	7 040	11 000	3 272	730	49	694	469	385	
Overton	14 866	5 109	5 105	2 130	4 603	532	4.8	14	3 527	7 900	1 098	634	34	544	203	107	
Perry	5 238	2 160	2 135	648	1 917	257	4.8	35	1 455	7 100	347	158	33	137	68	55	
Pickett	3 774	1 382	1 382	617	1 320	157	4.9	1	953	6 800	229	145	30–	145	36	82	
Polk	11 669	3 954	3 941	1 128	3 473	449	4.9	–	2 574	6 400	1 014	381	32	410	200	147	
Putnam	35 487	11 993	11 984	2 246	9 974	1 461	5.0	119	7 530	12 000	3 517	729	60	741	437	420	
Rhea	17 202	5 901	5 872	1 442	5 181	722	4.9	171	3 882	7 500	1 449	432	41	616	311	176	
Roane	38 881	13 189	13 072	1 875	11 517	1 546	5.1	442	9 118	10 500	2 985	570	45	1 176	813	371	
Robertson	29 102	9 859	9 841	2 209	8 578	1 280	4.9	1 280	6 045	10 800	3 026	1 053	45	1 008	623	263	
Rutherford	59 428	19 035	19 034	2 645	14 571	2 251	5.1	1 883	11 211	14 200	6 175	1 052	68	1 471	990	1 119	
Scott	14 762	4 648	4 641	2 189	4 194	510	4.8	–	2 954	5000–	1 279	751	32	704	205	121	
Sequatchie	6 331	2 003	1 999	529	1 785	217	4.7	–	1 461	6 800	419	161	41	273	135	37	
Sevier	28 241	10 268	10 096	2 269	9 119	1 024	4.9	40	6 651	11 500	2 262	675	47	939	530	333	
Shelby	722 014	222 626	222 604	9 618	157 501	33 278	5.0	68 160	122 728	14 400	90 799	6 129	68	25 885	23 401	6 906	
Smith	12 509	4 489	4 487	1 553	4 079	588	5.2	160	3 050	10 000	1 098	533	39	335	133	134	
Stewart	7 319	2 751	2 738	1 013	2 484	308	4.9	50	1 886	8 200	524	274	40	215	89	121	
Sullivan	127 329	42 187	42 029	4 271	34 974	4 574	5.1	696	29 781	14 300	10 286	1 687	62	2 934	2 084	1 139	
Sumner	56 106	18 603	18 542	3 044	16 531	1 816	5.3	1 160	13 117	16 100	4 024	1 121	54	1 313	840	697	
Tipton	28 001	8 517	8 488	2 667	7 444	1 116	4.7	2 106	4 514	10 400	3 463	1 628	48	1 315	542	246	
Trousdale	5 155	1 813	1 813	645	1 613	219	4.9	275	1 082	10 300	579	298	39	183	74	65	
Unicoi	15 254	5 194	5 189	1 175	4 658	622	5.0	3	3 761	10 200	1 108	414	46	483	236	88	
Union	9 072	3 119	2 963	1 585	2 755	279	4.7	6	2 030	7 300	617	453	30	419	92	99	
Van Buren	3 758	1 292	1 292	586	1 190	127	4.8	6	918	6 200	239	151	33	139	49	21	
Warren	26 972	9 501	9 490	1 831	8 466	1 181	5.1	343	6 369	9 700	2 300	547	48	712	452	321	
Washington	73 924	24 240	24 214	2 846	19 428	3 101	5.1	736	15 875	13 600	6 658	1 034	63	1 856	1 352	877	
Wayne	12 365	4 180	4 178	1 554	3 878	492	5.0	64	2 992	6 900	827	432	34	394	152	102	
Weakley	28 827	10 146	10 138	1 904	8 596	1 502	4.8	479	6 747	9 700	2 653	689	50	612	400	328	
White	17 088	6 039	6 006	1 707	5 484	718	5.0	108	4 246	9 400	1 247	515	41	520	233	203	
Williamson	34 330	11 028	11 013	2 154	9 232	1 103	5.2	1 215	7 264	17 400	2 968	848	59	1 030	580	365	
Wilson	36 999	12 900	12 700	2 444	10 803	1 497	5.2	1 155	8 522	14 100	3 144	760	55	959	669	408	

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1970 CENSUS OF POPULATION

General Population Characteristics

TENNESSEE

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Table 33. General Characteristics for County Subdivisions: 1970—Continued

(For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

County Subdivisions	Population									Households				
		Sex		Race			Age			Total			Negro and other races	
	Total	Male	Female	White	Negro	Other	Median age	Percent under 18 years	Percent 65 years and over	In group quarters	Number	Population	Persons per household	Number	Population	Persons per household
SULLIVAN—Continued																
East Kingsport div	8 463	4 116	4 347	8 431	9	23	27.7	33.4	5.9	1	2 618	8 482	3.23	7	32	4.57
Fordtown div	8 353	4 150	4 203	8 344	–	9	28.1	36.4	4.6	6	2 543	8 347	3.28	1	9	...
Holston Valley div	2 122	1 122	990	1 986	127	9	25.2	34.6	7.6	93	588	2 029	3.45	4	63	...
Indian Springs div	5 947	2 899	3 048	5 937	–	10	26.9	36.3	6.0	6	1 765	5 939	3.36	2	10	...
Kingsport div	31 708	14 753	16 955	30 194	1 472	42	31.8	30.9	8.7	244	10 605	31 464	2.97	454	1 508	3.32
North Fork Holston div	7 112	3 507	3 605	7 108	2	2	27.2	33.4	7.2	–	2 207	7 112	3.22	...	4	...
Piney Flats div	3 195	1 555	1 640	3 193	–	2	30.1	31.6	9.1	–	987	3 195	3.24	...	2	...
Sullivan Gardens div	7 325	3 620	3 705	7 322	2	1	27.1	34.2	6.3	–	2 222	7 325	3.30	...	3	...
Weaver div	6 179	3 122	3 057	6 078	95	6	27.1	36.6	7.6	56	1 750	6 123	3.50	33	101	3.06
SUMNER																
Bethpage div	1 834	943	891	1 678	154	2	34.0	32.5	13.0	–	582	1 834	3.15	45	156	3.47
Castalian Springs div	1 141	559	582	868	273	–	35.4	31.6	16.0	–	374	1 141	3.05	83	273	3.29
Gallatin div	16 214	7 736	8 478	13 272	2 914	28	28.1	34.9	9.4	126	5 175	16 088	3.11	815	2 915	3.58
Hendersonville div	20 979	10 423	10 556	20 422	530	27	26.1	40.1	4.7	34	5 945	20 945	3.52	140	557	3.98
Portland div	7 895	3 858	4 037	7 617	271	7	31.6	33.4	13.0	28	2 575	7 867	3.06	74	278	3.76
Westmoreland div	4 515	2 279	2 236	4 515	–	–	29.4	34.3	11.9	–	1 410	4 515	3.20	–	–	–
White House div	3 528	1 769	1 759	3 447	78	3	29.1	34.6	11.3	–	1 080	3 528	3.27	24	81	3.38
TIPTON																
Atoka-Brighton div	4 352	2 184	2 168	2 852	1 493	7	23.7	42.4	9.8	82	1 163	4 270	3.67	315	1 493	4.74
Covington div	9 360	4 513	4 847	6 312	3 045	3	28.0	37.9	11.7	–	2 845	9 360	3.29	768	3 048	3.97
Drummonds div	2 019	1 012	1 007	1 231	787	1	23.3	40.6	9.2	–	540	2 019	3.74	189	788	4.17
Garland div	2 098	1 044	1 054	2 012	86	–	32.2	32.7	10.5	–	670	2 098	3.13	27	86	3.19
Mason div	2 716	1 059	1 157	1 214	1 502	–	22.5	43.5	12.4	11	569	2 205	3.88	352	1 491	4.24
Munford div	6 057	3 005	3 052	4 889	1 149	19	23.4	40.1	6.8	–	1 718	6 057	3.53	254	1 168	4.60
Tabernacle div	1 899	947	952	877	1 022	–	21.8	44.9	9.6	–	472	1 899	4.02	204	1 022	5.01
TROUSDALE																
Hartsville div	5 155	2 513	2 642	4 221	932	2	33.1	31.0	13.1	47	1 661	5 108	3.08	276	932	3.38
UNICOI																
Erwin div	8 045	3 836	4 209	8 032	5	8	33.6	30.5	12.2	11	2 742	8 034	2.93	3	13	...
Flag Pond div	2 798	1 391	1 407	2 793	2	3	28.8	35.5	11.2	–	816	2 798	3.43	1	5	...
Unicoi div	4 411	2 194	2 217	4 409	–	2	27.8	35.6	9.0	–	1 311	4 411	3.36	...	2	...
UNION																
Luttrell div	3 508	1 737	1 771	3 506	–	2	27.1	36.5	9.5	–	1 024	3 508	3.43	...	2	...
Maynardville div	4 392	2 182	2 210	4 390	1	1	27.5	36.1	10.1	24	1 286	4 368	3.40	...	2	...
Sharps Chapel div	1 172	581	591	1 172	–	–	29.2	34.4	13.5	–	337	1 172	3.48	–	–	–
VAN BUREN																
Spencer div	3 758	1 861	1 897	3 747	10	1	28.5	33.2	10.3	5	1 157	3 753	3.24	7	11	1.57
WARREN																
Campaign div	1 761	853	908	1 659	101	1	31.5	32.1	12.8	–	572	1 761	3.08	25	102	4.08
Centertown div	1 575	797	778	1 515	60	–	29.0	34.5	9.3	10	486	1 565	3.22	12	59	4.92
Dibrell div	3 614	1 806	1 808	3 527	87	–	30.0	33.7	10.1	–	1 131	3 614	3.20	27	87	3.22
Irving College div	1 269	644	625	1 260	9	–	28.3	33.4	11.7	–	400	1 269	3.17	3	9	...
McMinnville div	15 743	7 514	8 229	14 921	816	6	28.7	34.0	11.1	96	5 129	15 647	3.05	236	816	3.46
Morrison div	3 010	1 514	1 496	2 867	143	–	32.4	32.8	12.2	21	951	2 989	3.14	42	143	3.40
WASHINGTON																
Bethesda div	3 717	1 836	1 881	3 713	–	4	28.9	32.8	10.0	11	1 116	3 706	3.32	...	4	...
Boone div	8 197	4 109	4 088	8 187	4	11	26.7	34.2	6.0	34	2 542	8 163	3.21	3	15	...
Johnson City div	33 770	16 825	16 945	31 217	2 492	61	30.4	28.0	12.3	3 332	10 101	30 438	3.01	677	2 394	3.54
Johnson City North div	4 175	2 044	2 131	4 133	40	2	26.6	34.6	8.9	84	1 212	4 091	3.38	8	42	5.25
Johnson City South div	9 196	4 632	4 564	9 148	19	29	25.2	32.5	6.6	13	2 925	9 183	3.14	10	48	4.80
Jonesboro div	4 827	2 356	2 466	4 631	185	6	31.4	30.8	11.9	139	1 513	4 683	3.10	51	184	3.61
Sulphur Springs div	4 824	2 393	2 431	4 821	2	1	30.8	31.0	9.9	–	1 516	4 824	3.18	...	3	...
Telford div	5 223	2 556	2 667	5 121	91	11	31.4	31.9	12.1	53	1 608	5 170	3.22	22	94	4.27
WAYNE																
Clifton Natural Bridge div	2 439	1 168	1 271	2 306	133	–	31.5	32.6	12.4	1	806	2 438	3.02	42	132	3.14
Collinwood div	2 963	1 492	1 471	2 963	–	–	25.7	36.6	8.8	3	839	2 960	3.45	–	–	–
Lutts-Cypress Inn div	2 551	1 309	1 242	2 551	–	–	27.4	35.9	10.0	–	759	2 551	3.36	–	–	–
Waynesboro div	4 412	2 105	2 307	4 331	75	6	29.0	34.7	10.9	35	1 395	4 377	3.14	26	81	3.12
WEAKLEY																
Chestnut Glade-Dukedom div	1 295	670	625	1 267	27	1	45.0	24.7	21.4	–	471	1 295	2.75	4	28	...
Dresden div	4 666	2 189	2 477	4 377	279	10	38.0	28.4	18.9	171	1 582	4 495	2.84	80	282	3.53
Gleason div	3 911	1 930	1 981	3 809	100	2	34.0	30.5	15.2	7	1 303	3 904	3.00	29	102	3.52
Greenfield div	3 934	1 876	2 058	3 681	243	10	35.9	29.2	15.7	–	1 376	3 934	2.86	75	253	3.37
Martin div	11 246	5 638	5 608	10 271	924	51	23.6	22.7	10.7	2 049	3 344	9 197	2.75	258	835	3.24
Palmersville div	1 344	679	665	1 342	2	–	42.0	26.2	17.6	–	484	1 344	2.78	...	2	...
Sharon div	2 431	1 195	1 236	2 274	157	–	35.3	30.2	17.0	–	840	2 431	2.89	47	157	3.34
WHITE																
Bon De Croft div	2 155	1 084	1 071	2 155	–	–	29.7	34.8	10.5	–	637	2 155	3.38	–	–	–
Doyle div	3 102	1 463	1 639	3 083	19	–	31.4	32.2	12.5	48	991	3 054	3.08	5	17	3.40
Macedonia div	2 592	1 287	1 305	2 591	1	–	30.3	32.4	10.6	1	818	2 591	3.17	...	1	...
Shady Grove div	2 045	979	1 066	2 037	8	–	30.4	32.2	11.1	3	641	2 042	3.19	2	8	...
Sparta div	7 194	3 421	3 773	6 826	360	8	32.0	30.9	12.2	63	2 406	7 131	2.96	101	366	3.62
WILLIAMSON																
Bethesda div	3 667	1 802	1 865	2 924	737	6	31.4	33.1	12.5	7	1 113	3 660	3.29	184	742	4.03
Boston div	2 335	1 202	1 133	2 202	128	5	27.0	35.6	9.6	39	641	2 296	3.58	23	119	5.17
Brentwood div	6 446	3 184	3 262	6 205	225	16	30.4	38.1	5.9	78	1 826	6 368	3.49	62	241	3.89
Fairview div	4 800	2 461	2 339	4 779	18	3	26.6	37.9	8.5	–	1 393	4 800	3.45	7	21	3.00
Franklin div	13 991	6 739	7 252	10 959	3 025	7	28.5	34.0	10.5	189	4 357	13 802	3.17	297	3 012	3.78
Nolensville div	3 091	1 494	1 597	2 430	657	4	29.1	36.5	10.8	–	902	3 091	3.43	156	661	4.24
WILSON																
Cedars div	3 192	1 612	1 580	2 816	374	2	32.8	32.1	11.6	–	995	3 192	3.21	87	376	4.32
Lebanon div	17 287	8 180	9 107	14 888	2 374	25	28.6	34.0	10.7	272	5 549	17 015	3.07	701	2 384	3.40
Martha-Laguardo div	3 215	1 652	1 563	2 879	336	–	29.8	34.3	9.2	–	984	3 215	3.27	92	336	3.65
Mount Juliet div	6 287	3 171	3 116	5 843	441	4	26.2	38.4	5.0	4	1 815	6 283	3.46	107	445	4.16
Northeast Wilson div	3 298	1 651	1 647	3 020	272	6	31.0	33.0	11.5	29	1 019	3 269	3.21	76	278	3.66
Watertown div	3 720	1 789	1 931	3 378	342	–	37.2	29.2	16.3	4	1 304	3 716	2.85	106	342	3.23

Table 34. Race by Sex, for Counties: 1970—Continued

(For meaning of symbols, see text)

Counties	Total	White	Negro and other races						
			Total	Negro	Other races				
					Total	Indian	Japanese	Chinese	Filipino	All other
Pickett	3 774	3 769	5	3	2	–	1	–	–	1
Male	1 874	1 871	3	2	1	–	–	–	–	1
Female	1 900	1 898	2	1	1	–	1	–	–	–
Polk	11 669	11 656	13	4	9	1	2	1	2	3
Male	5 697	5 688	9	3	6	–	–	1	2	3
Female	5 972	5 968	4	1	3	1	2	–	–	–
Putnam	35 487	34 845	642	480	162	35	9	54	–	64
Male	17 797	17 482	315	220	85	15	3	31	–	36
Female	17 690	17 363	327	260	77	20	6	23	–	28
Rhea	17 202	16 590	612	585	27	12	4	5	3	3
Male	8 307	8 021	286	277	9	3	–	1	3	2
Female	8 895	8 569	326	308	18	9	4	4	–	1
Roane	38 981	37 217	1 764	1 568	196	18	13	39	3	23
Male	18 762	18 013	749	703	46	1	7	22	2	14
Female	20 119	19 204	915	865	50	17	6	17	1	9
Robertson	29 102	24 451	4 651	4 625	26	5	6	2	4	9
Male	14 174	11 953	2 221	2 213	8	–	1	–	3	4
Female	14 928	12 498	2 430	2 412	18	5	5	2	1	5
Rutherford	59 428	52 172	7 256	7 135	121	31	19	6	5	60
Male	29 264	25 830	3 434	3 390	44	11	4	3	5	21
Female	30 164	26 342	3 822	3 745	77	20	15	3	–	39
Scott	14 762	14 750	12	1	11	7	1	–	1	2
Male	7 254	7 248	6	–	6	5	–	–	–	1
Female	7 508	7 502	6	1	5	2	1	–	1	1
Sequatchie	6 331	6 329	2	1	1	1	–	–	–	–
Male	3 143	3 143	–	–	–	–	–	–	–	–
Female	3 188	3 186	2	1	1	1	–	–	–	–
Sevier	28 241	28 095	146	133	13	7	4	–	1	1
Male	13 832	13 758	74	68	6	3	1	–	1	1
Female	14 409	14 337	72	65	7	4	3	–	–	–
Shelby	722 014	453 464	268 550	266 139	2 391	457	312	773	326	523
Male	346 603	221 096	125 507	124 264	1 243	227	100	421	199	296
Female	375 411	232 368	143 043	141 895	1 148	230	212	352	127	227
Smith	12 509	11 875	634	631	3	1	2	–	–	–
Male	6 157	5 866	291	290	1	–	1	–	–	–
Female	6 352	6 009	343	341	2	1	1	–	–	–
Stewart	7 319	7 135	184	171	13	3	4	–	2	4
Male	3 649	3 547	102	98	4	1	2	–	1	–
Female	3 670	3 588	82	73	9	2	2	–	1	4
Sullivan	127 329	124 714	2 615	2 432	183	64	25	26	12	56
Male	61 459	60 207	1 252	1 158	94	31	7	12	7	37
Female	65 870	64 507	1 363	1 274	89	33	18	14	5	19
Sumner	56 106	51 819	4 287	4 220	67	12	7	2	8	38
Male	27 567	25 533	2 034	2 005	29	6	3	1	3	16
Female	28 539	26 286	2 253	2 215	38	6	4	1	5	22
Tipton	28 001	18 887	9 114	9 084	30	11	10	1	–	8
Male	13 764	9 348	4 416	4 404	12	8	–	1	–	3
Female	14 237	9 539	4 698	4 680	18	3	10	–	–	5
Trousdale	5 155	4 221	934	932	2	–	1	–	–	1
Male	2 513	2 068	445	444	1	–	–	–	–	1
Female	2 642	2 153	489	488	1	–	1	–	–	–
Unicoi	15 254	15 234	20	7	13	6	2	–	–	5
Male	7 421	7 415	6	3	3	2	–	–	–	1
Female	7 833	7 819	14	4	10	4	2	–	–	4
Union	9 072	9 068	4	1	3	1	2	–	–	–
Male	4 500	4 499	1	–	1	–	1	–	–	–
Female	4 572	4 569	3	1	2	1	1	–	–	–
Van Buren	3 758	3 747	11	10	1	1	–	–	–	–
Male	1 861	1 856	5	4	1	1	–	–	–	–
Female	1 897	1 891	6	6	–	–	–	–	–	–
Warren	26 972	25 749	1 223	1 216	7	4	1	–	–	2
Male	13 128	12 539	589	587	2	1	–	–	–	1
Female	13 844	13 210	634	629	5	3	1	–	–	1
Washington	73 924	70 966	2 958	2 833	125	41	20	16	2	46
Male	36 751	35 325	1 426	1 366	60	11	6	12	1	30
Female	37 173	35 641	1 532	1 467	65	30	14	4	1	16
Wayne	12 365	12 151	214	208	6	2	2	–	1	1
Male	6 074	5 980	94	92	2	1	–	–	1	–
Female	6 291	6 171	120	116	4	1	2	–	–	1
Weakley	28 827	27 021	1 806	1 732	74	14	2	16	–	42
Male	14 177	13 356	821	778	43	9	1	9	–	24
Female	14 650	13 665	985	954	31	5	1	7	–	18
White	17 088	16 692	396	388	8	4	1	–	–	1
Male	8 234	8 048	186	181	5	4	–	–	–	1
Female	8 854	8 644	210	207	3	2	1	–	–	–
Williamson	34 330	29 499	4 831	4 790	41	14	12	2	3	10
Male	16 682	14 538	2 344	2 328	16	4	4	1	3	4
Female	17 648	14 961	2 687	2 462	25	10	8	1	–	6
Wilson	36 999	32 823	4 176	4 139	37	24	4	1	2	6
Male	18 055	16 082	1 973	1 958	15	9	2	1	–	3
Female	18 944	16 741	2 203	2 181	22	15	2	–	2	3

Table 35. Age by Race and Sex, for Counties: 1970—Continued

(For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

Counties	1970 population: All races Total	All races Male	All races Female	White Male	White Female	Negro Male	Negro Female	1960 population	1970 population: All races Total	All races Male	All races Female	White Male	White Female	Negro Male	Negro Female	1960 population
	STEWART								SULLIVAN							
All ages	7 319	3 649	3 670	3 547	3 586	98	73	7 851	137 229	61 459	65 870	60 907	64 587	1 158	1 374	114 139
Under 1 year	89	41	48	41	47	–	–	145	2 250	1 146	1 104	1 116	1 083	27	16	2 413
1 year	102	55	47	55	47	–	–	154	2 236	1 123	1 113	1 102	1 087	20	26	2 401
2 years	92	47	45	47	45	–	–	153	2 197	1 094	1 103	1 076	1 073	17	28	2 468
3 years	126	58	68	57	66	1	2	135	2 258	1 104	1 154	1 083	1 139	16	14	2 498
4 years	107	58	49	55	59	3	–	147	2 153	1 124	1 029	1 106	1 010	18	15	2 435
5 years	119	54	65	54	63	–	2	149	2 344	1 176	1 168	1 155	1 148	20	17	2 546
6 years	115	62	53	57	51	5	2	160	2 286	1 173	1 113	1 147	1 087	22	25	2 451
7 years	110	67	43	64	41	3	2	167	2 346	1 221	1 125	1 200	1 097	19	27	2 506
8 years	106	46	60	43	57	3	3	144	2 419	1 241	1 178	1 209	1 151	30	24	2 438
9 years	115	65	50	61	47	4	3	164	2 395	1 219	1 176	1 188	1 150	29	25	2 321
10 years	150	79	71	74	68	5	3	133	2 504	1 272	1 232	1 247	1 198	25	31	2 352
11 years	137	70	67	67	67	3	–	162	2 284	1 161	1 123	1 144	1 084	15	39	2 384
12 years	151	67	84	67	80	–	4	158	2 427	1 252	1 175	1 232	1 141	20	34	2 631
13 years	135	72	63	71	63	1	–	181	2 461	1 241	1 220	1 217	1 193	23	27	2 557
14 years	153	81	72	76	71	5	1	151	2 446	1 316	1 130	1 291	1 100	24	25	1 899
15 years	148	70	78	64	77	5	1	156	2 436	1 263	1 173	1 235	1 139	28	33	2 009
16 years	136	74	62	71	62	3	–	175	2 385	1 225	1 160	1 184	1 124	40	36	2 098
17 years	138	79	59	79	57	–	2	147	2 396	1 277	1 119	1 201	1 090	75	29	2 067
18 years	112	56	56	55	53	1	3	108	2 128	1 084	1 044	1 013	1 022	68	20	1 718
19 years	107	55	52	52	52	3	–	87	1 792	859	933	819	913	37	20	1 444
20 years	98	47	51	45	50	2	1	88	1 892	828	1 064	794	1 040	32	23	1 384
21 years and over	4 773	2 346	2 427	2 292	2 375	51	44	4 787	79 294	37 060	42 234	36 448	41 438	553	740	67 121
Under 5 years	516	259	257	255	254	4	2	734	11 094	5 591	5 503	5 483	5 392	98	99	12 215
5 to 9 years	565	294	271	279	259	15	12	784	11 790	6 030	5 760	5 899	5 633	120	118	12 260
10 to 14 years	726	369	357	355	349	14	8	785	12 122	6 242	5 880	6 131	5 716	107	156	11 823
15 to 19 years	641	334	307	321	301	12	6	673	11 137	5 708	5 429	5 452	5 288	248	138	9 336
20 to 24 years	489	271	218	267	213	4	3	407	9 890	4 359	5 531	4 244	5 416	98	105	7 341
25 to 29 years	392	202	190	199	188	3	2	379	9 933	4 923	5 010	4 862	4 943	52	60	7 896
30 to 34 years	327	132	195	129	188	2	6	409	8 432	4 118	4 314	4 078	4 246	34	59	8 766
35 to 39 years	384	176	208	171	200	5	8	469	7 883	3 730	4 153	3 675	4 077	50	67	9 232
40 to 44 years	438	206	232	196	226	10	3	429	8 299	3 935	4 364	3 905	4 262	46	77	7 693
45 to 49 years	498	267	231	259	224	8	7	481	8 490	4 016	4 474	3 954	4 397	59	75	6 916
50 to 54 years	450	217	233	213	229	4	4	481	7 193	3 457	3 736	3 374	3 657	79	74	5 719
55 to 59 years	455	220	235	219	232	1	3	434	6 137	2 946	3 191	2 891	3 120	53	69	4 364
60 to 64 years	426	198	228	192	227	6	1	359	5 032	2 347	2 685	2 316	2 644	28	39	3 520
65 to 69 years	339	175	164	172	158	2	5	377	3 675	1 567	2 108	1 541	2 055	26	51	2 680
70 to 74 years	282	138	144	137	144	–	–	298	2 729	1 168	1 561	1 141	1 520	25	39	2 057
75 to 79 years	195	91	104	86	102	5	2	198	1 732	675	1 057	654	1 028	18	28	1 285
80 to 84 years	124	65	59	65	59	–	–	96	1 058	380	678	364	664	15	13	677
85 years and over	72	35	37	32	35	3	1	58	703	247	456	243	449	7	7	359
Under 18 years	2 229	1 145	1 084	1 103	1 058	41	25	2 781	42 223	21 628	20 595	21 133	20 094	468	471	42 472
62 years and over	1 258	616	642	599	632	15	8	1 242	12 725	5 311	7 414	5 204	7 244	97	163	9 170
65 years and over	1 012	504	508	492	498	10	8	1 027	9 897	4 037	5 860	3 943	5 716	86	138	7 058
Median age	35.0	33.6	36.0	33.8	36.1	25.0	32.9	32.0	28.8	27.8	29.8	28.0	29.9	20.3	26.8	27.6
	SUMNER								TIPTON							
All ages	56 106	27 567	28 539	25 533	26 386	2 085	2 215	36 217	28 001	13 764	14 237	9 348	9 539	4 604	4 680	28 564
Under 1 year	1 046	540	506	502	465	38	40	740	557	291	266	181	177	110	89	756
1 year	960	487	473	455	436	32	36	753	503	261	242	186	152	75	90	754
2 years	967	480	487	446	452	34	34	705	499	268	231	172	136	95	95	764
3 years	1 002	522	480	480	436	40	44	737	547	274	273	161	174	112	99	775
4 years	1 102	552	550	512	495	40	55	752	569	287	282	180	159	107	123	694
5 years	1 234	630	604	568	552	61	52	760	607	326	281	201	165	125	115	787
6 years	1 288	664	624	603	582	60	41	796	673	365	308	219	176	145	132	722
7 years	1 249	617	632	574	583	43	49	797	664	336	328	198	187	137	141	691
8 years	1 217	621	596	575	533	46	63	736	669	347	322	208	198	139	124	700
9 years	1 202	618	584	561	533	57	51	725	643	336	307	213	174	123	133	708
10 years	1 260	630	630	568	583	61	47	723	690	369	321	223	197	146	124	709
11 years	1 241	669	572	611	528	58	44	741	608	319	289	185	167	134	122	689
12 years	1 163	574	589	544	536	29	53	806	694	360	334	212	197	148	136	730
13 years	1 134	553	581	504	542	49	38	757	697	333	364	193	215	140	149	673
14 years	1 122	587	536	531	482	56	54	647	63-	322	309	181	17b	141	131	568
15 years	1 135	616	519	555	478	60	41	630	667	356	311	219	170	137	141	584
16 years	1 082	565	517	516	465	49	52	654	622	331	291	182	179	148	112	618
17 years	1 036	533	503	484	459	49	43	638	609	314	295	195	166	119	129	585
18 years	786	371	395	344	345	26	49	491	510	250	260	147	177	103	83	473
19 years	695	336	359	293	322	43	36	423	439	203	236	125	166	78	70	335
20 years	652	277	376	253	337	24	39	430	392	182	210	143	146	39	63	337
21 years and over	33 551	16 125	17 426	15 054	16 142	1 050	1 254	21 776	15 511	7 334	8 177	5 424	5 883	1 903	2 279	14 912
Under 5 years	5 077	2 581	2 496	2 395	2 284	184	209	3 687	2 675	1 381	1 294	880	798	499	496	3 743
5 to 9 years	6 190	3 150	3 040	2 881	2 783	267	256	3 814	3 256	1 710	1 546	1 039	900	669	645	3 608
10 to 14 years	5 921	3 013	2 908	2 758	2 671	253	236	3 674	3 320	1 703	1 617	994	954	709	662	3 369
15 to 19 years	4 716	2 421	2 295	2 192	2 069	227	221	2 836	2 847	1 454	1 393	868	858	585	535	2 595
20 to 24 years	3 607	1 596	2 011	1 459	1 839	136	165	1 951	1 884	863	1 021	687	766	175	251	1 684
25 to 29 years	4 342	2 106	2 236	1 987	2 116	116	115	1 912	1 699	815	884	679	693	133	187	1 468
30 to 34 years	3 931	1 940	1 991	1 830	1 869	106	120	2 209	1 493	739	754	607	579	130	174	1 497
35 to 39 years	3 499	1 748	1 751	1 673	1 642	71	103	2 406	1 393	672	721	539	534	132	183	1 503
40 to 44 years	3 218	1 602	1 616	1 526	1 494	72	119	2 400	1 336	651	685	484	461	167	224	1 496
45 to 49 years	3 101	1 519	1 582	1 431	1 477	87	102	2 349	1 335	622	713	460	503	162	209	1 630
50 to 54 years	2 916	1 422	1 494	1 326	1 374	95	119	2 063	1 312	622	690	416	498	206	191	1 438
55 to 59 years	2 525	1 216	1 309	1 104	1 190	112	119	1 726	1 412	685	727	486	499	199	228	1 168
60 to 64 years	2 169	1 048	1 121	970	1 026	77	95	1 447	1 243	604	639	419	434	185	204	1 003
65 to 69 years	1 744	809	935	731	848	78	85	1 376	1 033	486	547	311	364	175	183	827
70 to 74 years	1 331	605	726	557	673	47	52	1 029	755	334	421	214	291	120	130	690
75 to 79 years	940	399	541	361	496	38	45	718	490	212	278	130	201	82	77	461
80 to 84 years	540	248	292	231	360	17	32	385	324	141	183	92	126	49	57	233
85 years and over	341	144	197	121	175	22	22	235	194	70	124	43	80	27	44	151
Under 18 years	20 441	10 458	9 983	9 589	9 140	862	837	13 097	11 149	5 795	5 354	3 509	3 167	2 281	2 185	12 507
62 years and over	6 109	2 775	3 334	2 527	3 040	245	291	4 611	3 486	1 577	1 909	1 011	1 304	566	604	2 963
65 years and over	4 896	2 205	2 691	2 001	2 452	202	236	3 743	2 796	1 243	1 553	790	1 062	453	491	2 362
Median age	27.9	27.4	28.4	27.7	28.5	22.6	25.9	30.5	25.1	23.7	26.4	26.5	28.6	17.8	20.0	22.9

Table 36. Household Relationship, Type of Family, and Race, for Counties: 1970—Continued

(For minimum base for derived figures (percent, median, etc.) and meaning of symbols, see text)

Counties	Sumner	Tipton	Trousdale	Unicoi	Union	Van Buren	Warren	Washington	Wayne	Weakley	White	Williamson	Wilson
RELATIONSHIP TO HEAD OF HOUSEHOLD													
Total, all persons	56 106	28 001	5 135	15 234	9 672	3 758	36 972	73 924	12 363	28 827	17 [illegible]	24 226	36 999
In households	55 918	27 908	5 108	15 243	9 648	3 753	36 845	73 828	12 226	26 688	16 970	24 017	36 698
Head	17 141	7 977	1 661	4 869	2 647		8 669	22 533	3 819	9 400	5 490	10 732	11 666
14 to 24 years	1 136	371	120	278	158	109	648	2 114	271	856	353	591	743
25 to 34 years	3 842	1 424	226	804	541	189	1 616	4 226	691	1 823	884	2 034	2 323
35 to 44 years	3 420	1 319	264	898	454	179	1 509	3 903	595	1 586	884	2 101	2 056
45 to 64 years	5 793	2 859	633	1 767	898	441	3 018	8 005	1 453	3 321	2 118	3 389	4 249
65 years and over	2 950	1 804	418	1 122	596	239	1 878	4 285	809	2 614	1 289	1 917	2 297
Primary individual: Male	688	436	82	169	90	48	361	1 228	178	546	195	386	503
Female	1 252	755	158	480	200	83	877	2 352	337	1 116	540	796	1 098
Family head: Male	14 021	6 082	1 256	3 760	2 150	939	6 760	16 726	3 007	7 139	4 269	8 271	9 163
Female	1 180	704	165	460	207	87	671	2 229	297	599	489	779	902
Wife of head	13 718	5 853	1 212	3 628	2 069	908	6 573	16 238	2 925	6 937	4 137	7 997	8 870
Child of head	21 803	11 580	1 834	5 801	3 730	1 487	10 081	26 471	4 967	8 846	6 311	13 309	13 841
Other relative of head	2 835	2 208	369	858	550	191	1 367	3 907	548	1 278	950	1 953	1 980
Not related to head	431	290	32	87	52	10	157	1 109	67	339	82	326	333
In group quarters	188	93	27	11	26	5	127	3 666	89	2 227	113	313	309
Inmate of institution	155	89	47	11	24	5	112	2 107	35	171	109	260	143
Other	33	4	–	–	2	–	15	1 559	4	2 056	4	53	166
Persons per household	3.26	3.50	3.08	3.13	3.42	3.24	3.10	3.12	3.23	2.83	3.09	3.32	3.15
White, all persons	51 819	28 887	4 221	15 234	9 068	3 747	35 749	70 966	12 151	27 921	16 692	24 499	32 822
In households	51 658	28 812	4 176	15 223	9 044	3 742	35 639	67 474	12 113	26 941	16 581	24 221	32 529
Head	15 960	5 868	1 385	4 865	2 645	1 150	8 324	21 762	3 751	8 906	5 384	9 003	10 497
14 to 24 years	1 076	499	101	278	158	109	634	2 071	270	830	350	535	685
25 to 34 years	3 634	1 179	195	803	541	189	1 544	4 117	689	1 772	893	1 842	2 113
35 to 44 years	3 245	998	208	898	454	177	1 453	3 798	587	1 514	869	1 886	1 867
45 to 64 years	5 334	1 986	531	1 766	897	440	2 904	7 726	1 425	3 120	2 071	3 117	3 791
65 years and over	2 671	1 206	350	1 920	595	235	1 789	4 062	780	2 470	1 199	1 623	2 041
Primary individual: Male	595	234	60	169	90	47	327	1 158	176	498	188	296	406
Female	1 122	539	141	480	200	81	841	2 225	316	1 041	532	695	976
Family head: Male	13 275	4 719	1 071	3 756	2 149	935	6 549	16 329	2 975	6 877	4 200	7 482	8 414
Female	968	376	113	460	206	87	607	2 050	284	690	454	530	701
Wife of head	13 002	5 385	1 041	3 621	2 067	905	6 369	15 857	2 892	6 690	4 072	7 270	8 174
Child of head	19 999	7 [illegible]	1 456	5 794	3 730	1 486	9 535	25 272	4 877	8 012	6 162	11 356	12 038
Other relative of head	2 344	865	270	857	550	191	1 256	3 577	528	1 029	893	1 355	1 565
Not related to head	353	149	24	86	52	10	145	1 006	65	304	70	237	255
In group quarters	161	75	45	11	24	5	198	3 492	38	2 080	111	278	294
Inmate of institution	134	–	45	11	2	–	106	1 988	35	164	105	240	132
Other	27	75	–	–	22	5	14	1 504	3	1 916	6	38	162
Persons per household	3.24	3.21	3.02	3.13	3.42	3.25	3.08	3.10	3.23	2.80	3.08	3.25	3.10
Negro, all persons	4 220	9 066	933	7	1	10	1 216	2 833	388	1 732	388	4 790	4 139
In households	4 193	9 066	930	7	…	10	1 209	2 673	387	1 597	384	4 757	4 125
Head	1 160	2 106	275	3	…	6	343	736	64	479	108	1 215	1 155
14 to 24 years	58	71	19	–	…	–	14	40	1	23	5	54	57
25 to 34 years	202	244	31	–	…	–	72	100	2	48	19	191	203
35 to 44 years	167	320	56	–	…	1	56	112	6	65	15	213	187
45 to 64 years	455	873	102	1	…	1	113	270	27	199	39	469	454
65 years and over	278	598	67	2	…	4	88	214	28	144	30	288	254
Primary individual: Male	92	202	22	–	…	1	34	62	2	45	7	87	96
Female	129	216	17	–	…	2	36	120	19	75	8	96	117
Family head: Male	728	1 360	184	3	…	3	209	384	30	252	68	283	741
Female	211	328	52	–	…	–	61	178	13	107	25	249	201
Wife of head	689	1 255	171	3	…	3	198	358	31	235	63	719	688
Child of head	1 790	4 327	378	1	…	1	546	1 166	90	606	145	2 140	1 791
Other relative of head	487	1 240	98	–	…	–	110	320	20	247	57	596	414
Not related to head	67	138	8	–	…	–	12	93	2	30	11	87	77
In group quarters	27	18	2	–	…	–	7	160	1	135	6	33	14
Inmate of institution	21	4	2	–	…	–	6	117	–	7	4	18	11
Other	6	14	–	–	…	–	1	43	1	128	–	15	3
Persons per household	3.61	4.30	3.38	…	…	1.67	3.52	3.63	3.23	3.33	3.56	3.92	3.57
FAMILIES BY NUMBER OF OWN CHILDREN UNDER 18 YEARS													
Total, all families	15 381	6 786	1 421	4 230	2 337	1 036	7 431	18 935	3 304	7 738	4 738	9 050	10 065
With own children under 18 years	8 798	3 797	693	2 198	1 296	542	3 990	9 879	1 874	3 512	2 410	5 082	5 362
With own children under 6 years	4 270	1 866	307	976	645	247	1 891	4 707	895	1 587	1 097	2 373	2 626
Total, husband-wife families	13 718	5 853	1 212	3 628	2 069	908	6 571	16 238	2 925	6 937	4 137	7 997	8 870
With own children under 18 years	8 104	3 361	609	1 961	1 190	495	3 614	8 778	1 720	3 195	2 169	4 618	4 869
With own children under 6 years	4 054	1 696	282	897	611	227	1 774	4 391	845	1 486	1 015	2 218	2 467
Total, families with female head	1 180	784	165	460	207	87	671	2 229	297	599	489	779	902
With own children under 18 years	617	352	76	198	82	36	316	962	124	265	198	378	402
With own children under 6 years	196	134	22	64	28	14	99	286	41	88	73	134	129
White, all families	14 343	5 095	1 184	4 216	2 353	1 022	7 136	18 379	3 259	7 567	4 664	8 012	9 113
With own children under 18 years	8 296	2 846	574	2 196	1 296	541	3 833	9 548	1 849	3 340	2 366	4 524	4 842
With own children under 6 years	4 011	1 369	255	975	645	247	1 812	4 564	884	1 507	1 077	2 135	2 349
White, husband-wife families	13 012	4 597	1 041	3 624	2 068	904	6 373	15 868	2 894	6 697	4 074	7 272	8 175
With own children under 18 years	7 741	2 649	526	1 959	1 190	494	3 498	8 564	1 703	3 078	2 139	4 223	4 474
With own children under 6 years	3 862	1 313	240	896	611	227	1 716	4 292	837	1 428	1 004	2 042	2 246
White, families with female head	968	376	113	460	206	87	607	2 050	284	690	464	530	701
With own children under 18 years	490	165	43	198	82	36	279	857	117	213	186	230	299
With own children under 6 years	133	45	13	64	28	14	79	243	38	67	65	74	85
Negro, all families	929	1 688	236	3	…	3	273	554	43	359	93	1 033	942
With own children under 18 years	491	950	119	1	…	–	157	317	23	162	44	555	514
With own children under 6 years	250	497	52	–	…	–	79	137	10	74	20	236	272
Negro, husband-wife families	689	1 253	178	3	…	3	196	358	39	331	62	719	688
With own children under 18 years	353	711	83	1	…	–	116	206	15	109	30	392	390
With own children under 6 years	184	383	42	–	…	–	58	95	7	53	11	174	217
Negro, families with female head	211	358	52	–	…	–	64	170	13	107	25	249	201
With own children under 18 years	126	187	33	–	…	–	37	100	7	50	12	148	103
With own children under 6 years	62	89	9	–	…	–	20	47	3	20	8	60	44

COUNTY AND CITY DATA BOOK 1972

A Statistical Abstract Supplement

COUNTIES

CITIES, METROPOLITAN AREAS

URBANIZED AREAS, UNINCORPORATED PLACES

REGIONS, DIVISIONS, STATES

Prepared under the direction of

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Data User Services Office

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Joseph R. Wright, Jr., Acting Assistant Secretary
for Economic Affairs
and Acting Administrator,

Social and Economic Statistics Administration

BUREAU OF THE CENSUS

Robert L. Hagan, Acting Director

Table 2.—COUNTIES

[Minus (–) denotes decrease]

SMSA	SEA	State and county	County	Land area	Population, 1970												
					U.S. rank[1]	Total	Per square mile[2]	Change, 1960-1970		Female	Urban	Race			Age		
								Total[3]	Not migration			White	Negro		Under 5 years	18 years and over	65 years and over	Median age
													Total	Change, 1960-1970				
				1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
				Sq. mi.				Per cent	Per cent	Per cent	Per cent			Per cent	Per cent	Per cent	Per cent	Years
			TENNESSEE—Con.															
...	04	47 137	Pickett	158	[2] 931	3 776	24	-14.2	-21.5	50.3	-	3 766	(B)	(B)	7.1	67.5	12.5	31.9
...	08	47 139	Polk	434	2 110	11 649	27	-4.0	-14.7	51.2	-	11 659	(B)	(B)	8.4	66.3	9.6	29.4
...	06	47 141	Putnam	405	920	35 487	88	21.4	10.9	49.8	40.2	34 955	447	-15.3	7.2	71.0	10.7	26.7
...	08	47 143	Rhea	312	1 661	17 202	55	8.8	-1.8	51.5	25.8	16 590	583	-8.8	9.4	65.1	10.4	28.0
...	08	47 145	Roane	350	842	38 881	111	-.6	-11.3	51.8	53.5	37 337	1 510	-6.2	8.0	66.5	9.1	29.5
...	04	47 147	Robertson	476	1 100	29 102	61	6.5	-2.1	51.4	33.4	24 399	4 694	-1.8	8.3	65.4	12.4	30.9
...	05	47 149	Rutherford	612	570	89 428	97	13.3	-3.9	50.7	58.7	82 239	7 139	.4	8.2	67.4	8.6	25.2
...	07	47 151	Scott	544	1 850	14 762	27	-11.2	-18.9	50.9	18.9	14 758	(B)	(B)	9.4	61.1	10.2	26.4
...	07	47 153	Sequatchie	273	2 673	6 331	23	7.0	-5.7	50.4	-	6 331	(B)	(B)	9.4	65.5	9.4	26.9
...	08	47 155	Sevier	597	1 128	28 241	47	16.5	5.0	51.1	9.4	28 143	(B)	(B)	8.1	66.6	10.0	29.7
4920	4	47 157	Shelby	755	41	722 014	956	15.2	.3	52.0	94.2	653 999	265 892	16.9	8.9	63.6	8.2	25.4
...	05	47 159	Smith	323	2 034	12 509	39	3.7	-2.0	51.0	-	11 878	631	2.8	7.6	69.3	14.1	33.8
...	03	47 161	Stewart	470	[2] 552	7 319	16	-6.8	-11.2	50.2	-	7 132	(B)	(B)	7.0	69.9	14.1	34.7
...	08	47 163	Sullivan	413	279	127 329	308	11.6	-2.0	51.7	55.8	124 836	2 399	-2.9	8.8	66.5	7.8	29.2
5360	04	47 165	Sumner	534	608	56 104	105	53.4	42.3	50.7	50.4	51 784	4 277	3.9	9.0	63.7	8.0	28.2
...	01	47 167	Tipton	459	1 136	28 001	61	-2.0	-16.3	50.8	20.7	18 908	9 084	-18.8	9.4	60.0	10.2	25.2
...	05	47 169	Trousdale	116	2 801	5 195	45	4.9	.9	51.3	-	4 223	932	12.6	7.8	69.3	13.6	32.1
...	08	47 171	Unicoi	185	1 816	15 284	82	1.1	-7.6	51.4	47.4	15 215	(B)	(B)	7.3	67.0	10.9	30.7
...	08	47 173	Union	212	2 358	9 072	43	6.8	-5.3	50.4	-	9 049	(B)	(B)	9.6	66.0	10.3	27.4
...	07	47 175	Van Buren	254	2 933	3 758	15	2.4	-7.1	50.2	-	3 730	(B)	(B)	8.2	65.9	10.4	29.3
...	06	47 177	Warren	439	1 171	26 972	61	16.8	6.1	51.5	39.5	25 750	1 211	8.4	8.4	65.7	11.2	30.1
...	08	47 179	Washington	323	473	73 924	229	14.0	3.8	50.3	45.7	71 058	2 778	11.1	8.0	68.8	10.4	29.1
...	03	47 181	Wayne	739	2 047	12 365	17	3.8	-7.3	50.9	-	12 151	(B)	(B)	8.9	64.1	10.7	28.9
...	02	47 183	Weakley	576	1 112	28 827	50	19.0	17.3	50.7	28.0	27 025	1 771	.9	8.6	73.6	15.1	31.1
...	06	47 185	White	382	1 736	16 385	43	4.8	1.1	52.3	30.1	15 989	(B)	(B)	7.7	67.7	11.4	31.6
...	05	47 187	Williamson	593	952	38 330	58	36.2	25.1	50.8	27.4	29 521	4 795	-5.1	8.4	66.3	9.5	28.8
5360	05	47 189	Wilson	567	888	34 909	65	33.7	23.9	51.3	33.8	32 848	4 132	.4	8.5	65.2	10.3	29.5
			TEXAS															
		48	The State	262 134	(X)	11 195 431	43	16.9	1.5	51.1	79.8	9 749 569	1 396 605	17.6	8.9	64.1	8.9	26.6
...	12	48 001	Anderson	1 072	1 145	27 789	26	-1.3	-5.3	52.1	52.3	20 826	6 948	-16.9	6.9	68.6	17.1	37.2
...	05	48 003	Andrews	1 504	2 224	10 372	7	-22.9	-36.7	50.3	84.2	10 082	(B)	(B)	8.7	62.3	5.6	27.3
...	13	48 005	Angelina	738	692	49 349	67	23.9	10.2	51.5	53.9	40 886	8 380	18.7	9.4	64.4	10.9	28.2
...	13	48 007	Aransas	279	2 373	8 902	32	27.1	17.4	50.4	50.5	8 540	(B)	(B)	7.7	63.9	13.6	33.9
9080	K	48 009	Archer	913	2 734	5 719	6	-5.7	-14.7	50.7	-	5 709	(B)	(B)	6.9	66.5	14.5	35.3
...	04	48 011	Armstrong	907	3 076	1 805	2	-3.6	-2.3	47.5	-	1 792	(B)	(B)	5.3	73.1	18.8	43.6
...	11	48 013	Atascosa	1 206	1 558	18 786	16	-.7	-14.7	50.9	44.8	18 656	(B)	(B)	9.2	60.9	11.5	26.8
...	14	48 015	Austin	663	1 914	13 831	21	.4	-1.7	51.9	19.9	11 182	2 683	-9.1	6.5	70.4	19.7	39.6
...	05	48 017	Bailey	835	[2] 420	8 487	10	-8.6	-23.7	51.1	53.3	8 205	(B)	(B)	10.2	60.6	8.8	26.5
...	02	48 019	Bandera	763	2 844	4 767	6	22.0	23.2	51.0	-	4 720	(B)	(B)	5.7	71.6	18.1	42.1
...	09	48 021	Bastrop	890	1 654	17 297	19	2.2	-1.3	51.7	57.7	12 730	4 534	-14.3	7.2	66.8	17.3	36.1
...	06	48 023	Baylor	845	[2] 795	5 221	6	-11.4	-15.0	51.8	69.0	5 054	(B)	(B)	6.5	72.0	20.2	43.0
...	11	48 025	Bee	842	[1] 354	22 737	27	-4.3	-28.6	48.9	58.7	22 044	563	5.0	9.1	63.0	8.1	23.4
...	08	48 027	Bell	1 047	288	126 483	119	32.3	7.3	45.1	84.8	107 327	15 772	88.1	8.9	68.8	7.0	23.1
7240	F	48 029	Bexar	1 246	34	830 460	667	20.9	1.8	50.8	94.9	748 201	56 138	23.9	9.4	62.0	7.5	28.0
...	02	48 031	Blanco	719	2 955	3 567	5	-2.5	-2.1	52.1	-	3 519	(B)	(B)	5.8	71.1	19.8	42.0
...	06	48 033	Borden	907	3 122	782	1	-17.5	-23.2	44.1	-	782	(B)	(B)	7.9	64.8	7.2	38.1
...	07	48 035	Bosque	990	2 173	11 072	11	1.5	5.8	51.8	26.7	10 717	(B)	(B)	6.8	70.5	23.9	47.6
8360	12	48 037	Bowie	891	508	67 813	76	13.1	1.8	52.0	63.8	52 955	14 730	2.5	8.5	66.0	11.6	30.5
5360	14	48 039	Brazoria	1 423	323	108 312	76	42.1	25.1	47.9	61.3	97 899	10 118	11.5	9.1	62.2	5.4	26.1
1260	09	48 041	Brazos	586	583	57 978	99	29.1	10.4	45.3	88.8	48 189	9 343	(Z)	9.2	68.6	7.5	22.8
...	01	48 043	Brewster	6 204	2 498	7 780	1	20.9	5.1	49.6	78.8	7 692	(B)	(B)	8.1	68.8	8.5	32.1
...	04	48 045	Briscoe	874	3 005	2 704	3	-21.9	-33.0	51.0	-	2 721	(B)	(B)	7.2	65.9	12.4	32.1
...	03	48 047	Brooks	904	[2] 478	8 005	9	-7.0	-27.0	50.9	83.8	7 995	(B)	(B)	9.7	56.8	7.8	24.5
...	06	48 049	Brown	938	1 218	25 877	28	6.6	1.6	52.9	67.1	24 859	885	19.1	6.3	72.3	18.6	36.8
...	09	48 051	Burleson	670	[2] 263	9 999	15	-10.5	-16.1	51.9	-	7 163	2 817	-19.4	6.5	67.7	18.4	37.6
...	07	48 053	Burnet	994	2 132	11 420	11	23.3	20.2	50.9	27.0	11 191	(B)	(B)	5.8	72.5	21.1	43.1
...	10	48 055	Caldwell	548	1 414	21 178	39	23.0	15.5	48.1	52.9	16 593	4 501	74.3	7.2	62.0	13.5	23.0
...	14	48 057	Calhoun	527	1 615	17 831	34	7.5	-14.8	50.3	58.5	17 030	785	-4.0	9.0	57.6	5.6	23.5
...	06	48 059	Callahan	856	2 450	8 205	10	3.5	3.4	51.6	-	8 199	(B)	(B)	5.4	71.2	20.9	41.2
1240	15	48 061	Cameron	896	260	140 368	157	-7.1	-32.1	52.7	77.6	139 490	599	-35.0	10.8	56.4	8.5	21.8
...	12	48 063	Camp	192	[2] 478	8 005	42	2.0	-6.0	52.1	48.0	5 183	2 817	-5.6	7.9	65.7	16.0	35.1
...	04	48 065	Carson	900	2 669	6 358	7	-18.3	-28.9	51.1	-	6 305	(B)	(B)	7.0	64.3	11.7	31.9
...	12	48 067	Cass	961	1 291	24 133	26	2.7	-3.8	52.3	20.7	17 695	6 395	-8.3	7.3	66.8	14.6	32.6
...	04	48 069	Castro	880	2 221	10 394	12	16.5	-8.9	49.5	39.4	9 867	511	37.4	11.6	54.0	5.2	20.3
...	14	48 071	Chambers	616	2 061	12 187	20	17.4	6.1	50.1	-	9 625	2 487	8.7	8.7	62.9	7.6	27.6
...	12	48 073	Cherokee	1 049	1 023	32 008	31	-3.4	-8.2	51.8	46.4	24 853	7 129	-16.3	6.8	71.2	16.4	37.7
...	04	48 075	Childress	699	[2] 636	6 605	9	-21.6	-23.7	53.1	84.7	6 254	(B)	(B)	5.6	73.9	20.5	42.6
...	04	48 077	Clay	1 102	2 466	8 079	7	-3.3	-3.5	51.6	37.2	8 048	(B)	(B)	5.7	69.7	17.1	37.1
...	05	48 079	Cochran	783	2 784	5 326	7	-17.0	-37.3	51.0	48.1	4 886	418	43.2	9.2	56.9	8.4	25.1
...	02	48 081	Coke	911	2 982	3 087	3	-18.0	-15.9	51.8	-	3 087	(B)	(B)	6.4	71.2	16.1	38.4
...	06	48 083	Coleman	1 280	2 231	10 268	8	-17.4	-16.0	53.5	54.8	10 026	(B)	(B)	5.6	73.0	23.9	45.4
1920	C	48 085	Collin	836	514	66 920	80	62.2	48.5	51.2	58.4	62 053	4 555	3.4	10.4	63.5	9.7	26.9
...	06	48 087	Collingsworth	898	2 842	4 755	5	-26.2	-31.7	52.2	62.3	4 308	426	-20.2	6.6	70.7	20.2	41.3
...	14	48 089	Colorado	949	1 626	17 638	19	-4.5	-10.7	51.3	39.5	13 567	4 066	-11.5	7.4	66.0	14.8	34.0
...	02	48 091	Comal	567	1 289	24 165	43	21.8	10.2	51.7	73.9	23 758	(B)	(B)	8.0	66.5	12.5	31.4
...	07	48 093	Comanche	944	2 082	11 898	13	.3	2.4	51.9	33.1	11 885	(B)	(B)	5.8	73.2	21.6	43.3
...	02	48 095	Concho	1 008	2 991	2 937	3	-20.0	-28.4	52.2	-	2 937	(B)	(B)	7.4	70.9	21.0	43.2

- Represents zero. B Data not shown where population is less than 400. X Not applicable.
[1] Based on corrected population totals shown in Appendix B. [2] Nantucket County, Mass. and Pickett County, Tenn. are identical in rank—2931.
[3] Stewart County, Tenn. and Pepin County, Wis. are identical in rank—3559. [4] Keith County, Nebr. and Bailey County, Tex. are identical in rank—2420.
[5] Bremer County, Iowa and Bee County, Tex. are identical in rank—1354. [6] Brooks County, Tex. and Camp County, Tex. are identical in rank—2478.
[7] Grant County, Ky. and Burleson County, Tex. are identical in rank—2283. [8] Cleveland County, Ark. and Childress County, Tex. are identical in rank—2636.

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The Public Law Institute is pleased to announce the recent appointment of Ms. Patricia J. Cottrell as Director of the Public Law Institute. She has previously worked with the Public Research and Service Program as Project Administrator of the Legal Assistant Training Program. Since graduation from the University of Tennessee College of Law in June, 1976, she has been employed as an Assistant Attorney General in Nashville in the areas of criminal, juvenile, and civil litigation.

Former Public Law Research and Service Program Coordinator Grayfred B. Gray is pursuing further studies at the University of Michigan Law School. The editors of the Judicial Newsletter wish to express their sincere appreciation for the counseling and assistance Professor Gray has given towards the development of the Newsletter. When he returns to the College of Law in June, 1978, Mr. Gray will serve as Faculty Coordinator for the Public Law Institute. Professor Neil Cohen is serving in the capacity of Faculty Coordinator in the interim.

MITCHELL V. ROSE: CONSTITUTIONAL GUARANTEEES EXTENDED TO GRAND JURY FOREMAN SELECTION

Diana D. Shuck, Law Student
University of Tennessee
College of Law

Racial discrimination in the selection of grand jury venires has been recognized as unconstitutional for over a century. The Fourteenth Amendment guarantees to persons of color "the right to exemption from unfriendly legislation against them distinctly as colored." [Strauder v. West Virginia, 110 U.S. 303, 308 (1879).] Recently, the Sixth Circuit United States Court of Appeals extended this constitutional guarantee to the selection of grand jury foreman venires. [Mitchell v. Rose, 570 F.2d 129 (1978).] Mitchell said that convictions cannot stand where a prima facie case of discrimination in the selection of the grand jury foreman has been established and not rebutted. This decision affects the Tennessee judiciary for two reasons: first, the Mitchell case originated in Tipton County, Tennessee and second, T.C.A. §40-1506 allows the local judge to hand-pick the grand jury foreman.

HISTORICAL BACKGROUND

> "No citizen possessing all other qualifications which are or may be proscribed by law shall be disqualified for service as grand or petit juror in any court of the United States, or of any State on account of race, color, or previous condition of servitude..." [18 U.S.C. §243 (1875).]

18 U.S.C. §243 was enacted in 1875 to ensure that no citizen would be excluded from jury duty on account of race, color, or previous condition of servitude by making such exclusion a crime. Four years later, the United States Supreme Court declared unconstitutional a discriminatory state statute which prohibited blacks from serving on grand juries. [Strauder v. West Virginia, 110 U.S. 303 (1879).] States had no constitutional duty to provide grand juries but they had to meet constitutional criteria if grand juries were used in the indictment process. [Ex parte Virginia, 100 U.S. 339, 346-347 (1879).] Total exclusion of blacks from jury service is obviously unconstitutional. After Strauder, some states passed race-neutral statutes while continuing to prevent persons of color from serving on grand juries. In response to such tactics, the constitutional prohibition was extended in 1881 to discriminatory enforcement of neutral statutes. [Neal v. Delaware, 103 U.S. 370 (1881).]

The development of a "prima facie case" of discrimination was discussed in the "neutral statute" case of Norris v. Alabama. [294 U.S. 587 (1935).] Two facts enabled Norris to prove his case: no black had ever served on a jury in his community and the jury commissioners admitted they had never considered permitting a black to serve. It was also proven that some blacks were otherwise qualified to be on a jury. This selection procedure alone was enough to assert a prima facie case of discrimination which the State did not rebut.

The Supreme Court has also recognized substantial underrepresentation and proportional limitations on the number of blacks on

jury lists as raising serious due process and equal protection questions. Courts have stated a belief that chance and accident alone could not bring about a substantial disparity between the number of blacks sitting on juries and the number qualified to serve. Where it was statistically proven that a mere five persons of color had served on the past thirty-two grand juries, a Harris County, Texas court found the partial exclusion to be purposeful and in violation of the Fourteenth Amendment. [Smith v. Texas, 311 U.S. 128 (1940).]

Limitations have rarely been imposed upon who may challenge the composition of a grand jury. It is usually unnecessary to determine if the litigant was in any way prejudiced or whether he was one of the excluded class. [Thiel v. Southern Pacific Co., 328 U.S. 217 (1946).] In Tennessee, however, the plaintiff must show prejudice but not class membership. [Young v. State, 458 S.W.2d 635 (Tenn. Crim. App. 1970).] A caucasion has successfully attacked a jury venire which contained no blacks [Peters v. Kiff, 407 U.S. 493 (1972)] and a man has standing to raise the issue of jury discrimination when there were no women selected for grand jury duty. [Taylor v. Louisiana, 419 U.S. 522 (1975).] Affirmative relief may be sought by plaintiffs excluded from jury service as well as criminal defendants who seek to challenge the judgments against them. [Carter v. Jury Commission of Greene County, 396 U.S. 320 (1970).] In the light of the potential great harm to defendants and their constitutional interests, most courts would rather err in allowing too many defendants to challenge than too few.

An official act is not unconstitutional solely because it has a racially disproportionate impact. [Washington v. Davis, 426 U.S. 229 (1966).] Actual discrimination against members of a particular group in the selection of a grand jury is on the party who asserts the discrimination. There is a presumption that officers in charge of the selection of a jury panel have performed their duty fairly, but this presumption can be overcome by evidence to the contrary. [Montgomery v. State, 45 So. 879 (Fla. 1908).] When a prima facie case of discrimination in selecting a jury panel is presented, the burden then falls on the State to overcome it. [Patton v. Mississippi, 332 U.S. 463 (1947).] The burden is not met by mere assertions by public officials that there has been no discrimination. The Norris case said:

> "if... the mere general assertions by officials of their performance of duty were to be accepted as an adequate justification for the complete exclusion of Negroes from jury service, the Constitutional provision--adopted with special reference to their protection--would be but a vain and illusory requirement." [294 U.S. at 593 (1935).]

It is assumed if the state has any contradictory evidence to disprove the prima facie case, it will not refrain from introducing it. [Pierre v. Louisiana, 306 U.S. 354 (1938).]

The Constitution does not require that every grand jury represent every class, subclass or identifiable group in the community. The only requirement is that a fair jury be selected without regard to race. A defendant has no Fourteenth Amendment right to be indicted or tried by any particular jury, or by a jury composed in part of

members of his race. [Virginia v. Rives, 100 U.S. 313 (1880).] Fairness in the selection of a jury does not require a proportional representation by race. [Akins v. Texas, 325 U.S. 398 (1945).]

The issue of racial discrimination in the selection of grand jury foremen was first addressed in Hale v. Henderson, 485 F.2d 266 (6th Cir. 1973). In Hale, the petitioner alleged racial discrimination in the selection of the grand jury foreman, but not in the selection of the grand jury. The case originated in Tennessee where T.C.A. §40-1506 allows the local judge to hand-pick the foreman. A black had never served in that county and it appeared that Hale could prove a prima facie case. He did not succeed with his appeal, however, since the regular foreman was not serving and in his place a foreman pro tempore had been chosen from the regular grand jury venire. Hale had not alleged discrimination in the selection of the regular grand jury and his case was lost.

MITCHELL V. ROSE: THE 14TH AMENDMENT APPLIED TO GRAND JURY FOREMAN SELECTION

As the first federal case to apply jury discrimination standards to foremen and forewomen, Mitchell v. Rose, 570 F.2d 129 (1978), relies on the proposition that a grand jury which is only twelve-thirteenths constitutional cannot render constitutionally valid indictments. This is true even if the foreman or forewoman does not actually vote on the indictment. Each panel of grand jurors is a distinct legal entity and the identity of the foreman is merged with the other jurors. Therefore, previous statutory and case law concerning racial discrimination in grand juries is also applicable to foreman selection.

In Mitchell, a Tipton County, Tennessee case, the foreman was personally selected by the trial judge with no consultation to the venire lists. The petitioners attacked the selection of the foreman and the grand jury, claiming there had never been a black foreman in the history of Tipton County and that there was substantial disparity between the number of blacks qualified to serve and the number listed on the venire lists. The Sixth Circuit Court of Appeals expressed doubt as to the validity of the grand jury allegation but did not have to decide the issue because they declared a prima facie case had been made on the foreman issue.

Mitchell adopts the "combination of factors" test enunciated in previous grand jury discrimination cases and uses it to prove a prima facie case on the foreman issue. The test is as follows: if over a significant period of time there exists substantial disparity between the proportion of blacks in the general population and the proportion called to serve and if selection procedure is not racially neutral or affords opportunity to discriminate, then the defendant has made out a prima facie case. [Castaneda v. Partida, 430 U.S. 487 (1977); Alexander v. Louisiana, 405 U.S. 625 (1972); Avery v. Georgia, 345 U.S. 559 (1953).] Two factors established the prima facie case: first, no black person had ever been selected to serve as foreman or forewoman in a county that was 32% black; and second, the trial judge admitted that he "never really gave any thought" to appointing a black grand jury foreman.

The petitioners in Mitchell were not required to show prejudice in the selection of the foreman. The Sixth Circuit believed that the foreman in Tennessee had a position of authority and influence and that the potential for prejudice was clear. [See T.C.A. §40-1510).] Although the prejudice of a grand jury foreman could be far-reaching, it might be impossible to prove, and the petitioners would be unable to obtain any relief from the courts. Therefore, proof of prejudice was not required.

The petitioners prevailed in Mitchell because the trial judge had not complied with his duty as a foreman selector. State officials who choose grand jurors have the duty to learn who is qualified for service without regard to race and must consider individuals from all segments of society. [Turner v. Fouche, 396 U.S. 346 (1970).] Discrimination occurs when officials exclude all blacks whom they do not know to be qualified and no attempt is made to discover who is qualified. [Hill v. Texas, 316 U.S. 400 (1942).] Mitchell goes one step further and says that systematic discrimination is enough to establish that officials have failed in their duty.

The Sixth Circuit does not imply that there must be black grand jury foremen or even that a proportional number of blacks must serve. The only requirement is that the selection system entail consideration of blacks and other subgroups for the position. In areas where jurors and foremen are randomly selected with no regard to race or color, there should already be compliance. The larger problem exists where key-man systems, such as exists in Tennessee, or similar methods of hand-picking jurors are still in effect. Only when a special effort has been made by officials to consult with members of identifiable groups to insure cross-sectional representation has a key-man system been declared nondiscriminatory. [Swain v. Alabama, 380 U.S. 202 (1965).]

The remedy in Mitchell for a successful challenge of discrimination in selection of a foreman or forewoman is reversal. Previous grand jury cases have afforded the same remedy, no matter how strong the evidence of guilt. [Avery v. Georgia, 345 U.S. 559 (1953).] The petitioners in Mitchell had been indicted and convicted on two counts of first degree murder before the Sixth Circuit reversed. The court, however, did not intend for those truly guilty to go free. Mitchell said the lower court may reindict and reconvict by procedures conforming to constitutional requirements.

IMPLIED DUTIES OF THE TENNESSEE JUDICIARY AFTER MITCHELL

As long as Tennessee continues the key-man method of jury selection, state officials and state judges will have to take visible, affirmative steps to seek out qualified blacks to serve as foremen in their prospective counties. It is not mandatory that a black serve in that position nor will the presence of one or two blacks prove nondiscrimination. It is the act of genuinely searching for qualified people of all races and subgroups in an effort to achieve a representative cross-section of the community that shows nondiscrimination in the selection of a grand jury foreman. If there are a substantial number of qualified blacks, naturally such a search will result in black foremen.

In a key-man state where the foremen position is filled by the trial judge from the general population, there is ample opportunity for discrimination, whether conscious or unconscious. While discrimination must be intended, officials who select grand jurors must be considered to have intended the natural results which flow from their conduct. [Rabinowitz v. United States, 366 F.2d 34 (5th Cir. 1966).] The trial judge in Mitchell who "never really gave any thought" to appointing a black was intentionally discriminating. Judges must take seriously their duty to consider qualified individuals from all segments of society to serve as foreman or forewoman. Mere assertions by judges that there has been no discrimination in the selection procedure will not rebut a prima facie case to the contrary. [Norris v. Alabama, 294 U.S. 587 (1935).]

Counties that have an identifiable group of blacks as residents will be expected to at least seriously consider choosing a black to serve as grand jury foreman. According to the laws of statistics, the larger the black population, the greater the probability that many blacks are qualified to serve and should therefore be considered. The United States Supreme Court has never used any magical per capita formula to decide what is discriminatory and what is not in the selection of grand jurors. Instead, they have left the rules flexible. The Mitchell case suggests guidelines for the protection of Fourteenth Amendment rights which could be applicable at least in the courts of Tennessee.

[EDITOR'S NOTE: The United States Supreme Court is presently considering review of the Mitchell case, but certiorari has yet to be granted.]

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APPENDIX 17